(22,675.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 529.

GEORGE T. SIMPSON ET AL., APPELLANTS,

vs.

DAVID C. SHEPARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 6, 1911.

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Testimony in seven volumes and exhibits in two volumes, referred to on side page 292, with separate index in each volume, accompany this record.

a Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Præcipe for Return to United States Supreme Court.

To the Clerk of the Above Named Court:

Please make a return to the United States Supreme Court and include therein the following, viz:

Bill of Complaint.
Temporary Restraining Order.
Præcipe Chancery Subpœna & Order.
Chancery Subpœna.
App. for Northern Pacific Railway & Order.
Order Continuing Hearing.
Præcipe App. Rd. & Wh. Commission & Order.
Præcipe App. J. Rumsey Reeve.
" " O. J. Whiteman.
" " E. T. Young.
Motion to Dismiss as to E. T. Young.
Motion to Dismiss Temporary Injunction.
Motion to Dischg. Restraining Order as to Rd. & Wh. Commission.
Motion to to Dischg. Restraining Order as to J. Rumsey Reeve.
Motion to Dischg. Restraining Order as to O. J. Whiteman.
Order Denying Motion to Dismiss Bill as to E. T. Young.
Order Continuing Hearing on Order for Temporary Injunction.
Order Continuing Hearing on Order to Show Cause.
Opinion on Motion to Dismiss Order to Show Cause as to E. Y. Young (Denied).
Order & Amendment to Bill of Complaint.
Demurrer of Rd. & Wh. Commission.
" " E. T. Young.
" " J. Rumsey Reeve.
" " O. J. Whiteman.
Stipulation setting Demurrers down for Hearing.
Answer Ira B. Mills, et al.
Record of Trial.
Order Allowing Amendment to Bill of Complaint.
Record of Trial.
App. F. H. Peterson.
Record of Trial.
Order Overruling Demurrers.
Order for Temporary Injunction.
Decision on Application for Temporary Injunction.
Temporary Injunction.

Separate Answer of E. T. Young.
Replication.
Replication to Answer of E. T. Young.
b Suggestion of Death of C. E. Perkins & Order.
Petition for leave to file Amended Bill.
Order allowing Amended Bill to be filed.
Amended & Supplemental Bill.
Notice & Motion for Appointment of Special Master.
Order Appointing Special Master.
Oath of Special Master.
Separate Answer E. T. Young, et al., to Amended Bill.
Replication.
Præcipe Appointing Durment & Moore for E. T. Young et al.
Stipulation & Order Substituting parties defendant.
Order Substituting parties Defendant.
Præcipe Appointing Geo. T. Simpson et al. for certain defendants.
Order Appointing Geo. T. Simpson for certain defendants.
Order in re payment of costs.
Master's Report.
Hearing on Master's report.
Application of Special Master & Order to Show Cause.
Objections Attorney General to Master's fees.
Order Allowing Master's Fees.
Decision confirming Master's Report.
Decree.
Order Modifying Decree.
Record for Hearing on Application for Appeal.
Stipulation to file Abridged Copies 1907-8-9.
Order to File Abridged Copied 1907-8-9.
Abridged Copies certified separately.
Notice of Petition to Appeal.
Notice to Join in Appeal.
Petition for Allowance of Appeal.
Order for Allowance of Appeal.
Assignments of error and prayer for Appeal.
Bond on Appeal.
Citation.
Clerk's Certificate.
Printed copy of Testimony consisting of 7 bound volumes also 1 volume of complainants' and 1 volume Defendants' Exhibits.
And Abridged copies of Reports Railway Company to Railroad and Warehouse Commission of the State of Minnesota.

GEORGE T. SIMPSON,
EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Appellants.
JARED HOW,
PIERCE BUTLER,
WILLIAM D. MITCHELL,
Solicitors for Appellees.

(Endorsed:) Præcipe for Return to U. S. Supreme Court. Filed May 10, 1911. Louise B. Trott, Clerk.

1 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles E. Staples, William E. Young, E. A. Everts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michard.

Pleas before the Honorable the Judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the December Term, 1910, of said Court, held in said District, in the year of our Lord 1910.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 29th day of May, 1907, came the complainants above named by their Solicitors and of counsel and filed in the Clerk's office of said Court, their bill of complaint in the words and figures following, towit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD, Complainants,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud, Defendants.

Bill of Complaint.

To the Judges of the Circuit Court of the United States for the District of Minnesota:

Your orators, Charles E. Perkins, a citizen of the State of Iowa, and a resident therein, and David C. Shepard, a citizen of the State of Minnesota and a resident of the County of Ramsey therein,
3 bring this their bill of complaint against Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, and having its principal place of business in the City of St. Paul, in the State of Minnesota, Edward T. Young, a citizen of the State of Minnesota, and a resident of the County of Ramsey therein, Ira B. Mills, Charles F. Staples and William E. Young, who are each of them citizens of the State of Minnesota and residents, respectively, of the Counties of Clay, Dakota and Blue Earth therein, E. A. Evarts, O. J. Whiteman, J.

Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, who are each of them residents of the State of Minnesota, said Evarts, Whiteman and Reeve being residents, respectively, of the Counties of Otter Tail, Sherburne and Stevens therein, and said Michauds being each of them a resident of the County of Ramsey therein, and thereupon your orators aver:

I.

The defendant Northern Pacific Railway Company is a railroad corporation and a common carrier of goods and passengers engaged in state and interstate commerce, and owning, maintaining and operating lines of railway in the State of Minnesota and other states. The main line of said Northern Pacific Railway Company extends from the City of Superior, in the State of Wisconsin, and the Cities of Duluth, St. Paul and Minneapolis, in the State of Minnesota,
4 in a westerly direction through the States of Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the Cities of Seattle, Tacoma and Portland, on the Pacific Coast. Its system of railroads, including its said main line and its branches, comprises about fifty-five hundred (5,500) miles. The whole of its railroads constitute and have constituted one system, and have been and are operated as such. The stock and bonds of the company outstanding represent the whole system. It is impossible to segregate its stock or bonds so as to say that any part of them or of either of them stand for or represent its railroad in any state. Its cars, engines, supplies and appliances are, for the most part, used upon the system wherever required. It is impossible to operate the said railroads separately in any state, and, for the most part, the trains of the said company necessarily move between different states, the same train and cars carrying both interstate freight and passengers and freight and passengers locally within each of said states. The principal business of said company consists of interstate commerce, and it is a carrier in such commerce, subject, as your orators are advised and believe, to the sole supervision and control of the United States.

II.

The defendant Edward T. Young is the Attorney General of the State of Minnesota.

The defendants Ira B. Mills, Charles F. Staples and William E. Young are the members of and constitute the Railroad and
5 Warehouse Commission, duly elected and acting as such under the General Statutes of said state.

The defendants E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud are hereby designated as shippers, each being a person engaged within the State of Minnesota in shipping freight over, and in receiving freight shipped over, the lines of said Railway Company within the State of Minnesota. These last named defendants represent a class of shippers so numerous that it is impossible to attempt to join them all as parties hereto; and said defendants are made parties hereto for the

purpose of determining the rights as against the said Railway Company of all shippers under the Acts and Orders, respectively, hereinafter set forth.

III.

This is a suit in equity arising under the Constitution of the United States for that your orators seek to enjoin said defendant Northern Pacific Railway Company from publishing or adopting or continuing to observe or keep in force, if the same have been published or adopted, certain rates, tariffs and charges prescribed or set forth in two certain Acts of the Legislature of the State of Minnesota, and two certain Orders of the Railroad and Warehouse Commission of said state hereinafter specifically described, and to enjoin the other defendants herein, and each thereof, from attempt-
6 ing in any manner to enforce the provisions of said Acts or Orders, or either thereof, or from instituting any action or proceeding against said defendant Railway Company, its officers, directors, agents or employés on account of any violation thereof, for the reason that the said Acts and Orders, and each of them, and all the tariffs, rates, charges, regulations, schedules and classifications therein assumed to be prescribed, and each of them, are violative of the Constitution of the United States. The matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of two thousand dollars.

IV.

On the 6th day of September, 1906, the Railroad and Warehouse Commission of the State of Minnesota, assuming to act under and by virtue of the provisions of the statutes of said state, made and published, and thereafter duly served an order entitled "In the Matter of the Investigation of the Reasonableness of the Merchandise and Commodity Tariffs of Rates and Charges between Stations in the State of Minnesota on the Several Lines of Railroad," a copy of which Order is hereto annexed, marked "Exhibit 1," and is hereby made a part hereof; and on the 3d day of May, 1907, likewise made and published its certain order, a copy of which is hereto annexed, marked "Exhibit 2."

The tariff of said defendant Railway Company prior to the pro-
7 mulgation of said Orders and the reduction therein as affected by said Orders *are* shown in Exhibit 3, hereto attached and hereby made a part hereof.

V.

The legislature of the State of Minnesota, at its session of 1907, passed an Act which was approved on the 18th day of April, 1907, and is entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission." A copy of such Act is hereto annexed, marked "Exhibit 4," and is hereby made a part hereof.

The rates of said defendant Railway Company which will be affected by said Act and the tariff as fixed in said Act, are shown in Exhibit 5, attached hereto and hereby made a part hereof.

VI.

At the same session said legislature of the State of Minnesota passed an Act, which was approved on the 4th day of April, 1907, and is entitled "An Act Prescribing the Maximum Rate to be Charged for the Transportation of Passengers Upon Railroads Within the State of Minnesota, Providing for the Enforcement of the Same and Penalties for the Violation Thereof." A copy of such Act is hereto annexed, marked "Exhibit 6," and is hereby made a part hereof. Prior to the taking effect of said Act, said defendant Railway Company was charging a rate of three cents per mile for passengers over twelve years of age, and two cents per mile for
8 passengers under twelve years of age.

VII.

Said defendant Northern Pacific Railway Company has published and put into effect, and now keeps and maintains in effect, the rates prescribed in said Order of September 6, 1906, and in said Act approved April 4, 1907, and threatens to publish and put into effect the rates prescribed in said Order of May 3, 1907, and said Act approved April 18, 1907, when said Act and Order shall become effective by virtue of the terms thereof.

VIII.

Upon the railroads of said Northern Pacific Railway Company are two large grain fields, one comprising the western portion of the State of Minnesota, the State of North Dakota and eastern portion of the State of Montana, the other comprising the eastern portion of the State of Washington and a portion of northern Idaho.

From the Minnesota-North Dakota-Montana field all the grain moves to the head of Lake Superior or to Minneapolis. From the Washington-Idaho field it moves principally to Puget Sound or to Portland.

Between the eastern termini of the lines of said Railway Company and Montana the coal shipped by said Railway Company comes entirely, or substantially entirely, from the head of Lake Superior, and is delivered at all stations upon the lines of said
9 Railway Company through Minnesota and North Dakota.

The cattle, sheep and hogs shipped over the lines of said Railway Company are produced in the whole region tributary to such lines in the States of Minnesota, North Dakota and Montana, and when shipped, are substantially all shipped to the same market, viz., St. Paul, or points beyond.

Lumber carried by said Railway Company is produced in one of three districts: First, Minnesota; second, Montana and Idaho; third, Washington. The Minnesota lumber is carried by said Railway Company to various points in Minnesota, Wisconsin and North Dakota. The main shipment of the western lumber is from the point of production thereof to the eastern terminals of the lines of said Railway Company.

The conditions attending the transportation of wheat are substan-

tially the same, whether the wheat is shipped from North Dakota stations of from Minnesota stations.

The conditions attending the transportation of coal are substantially the same whether the coal is shipped to Minnesota stations or to the North Dakota stations.

The conditions attending the transportation of live stock are substantially the same whether the shipment originates in Minnesota, North Dakota or Montana.

The conditions attending the transportation of Minnesota lumber are substantially the same regardless of whether the same is
10 shipped to points within or without the state.

The conditions attending the transportation of merchandise are the same upon said Railway Company's lines in Wisconsin, Minnesota and North Dakota; and the merchandise shipped to points in those states is shipped from the same points of origin.

The conditions attending the transportation of passengers are the same in all said states, and, for the most part, whether such transportation is wholly within a state or interstate.

It is the duty of said Railway Company to serve all the localities above mentioned, and all the communities therein, without discrimination.

Therefore, in view of its legal obligation not to discriminate it has always been the practice of said Railway Company to make its tariffs on merchandise, on grain and other products of the soil, on live stock and on lumber in the territory above referred to, and, for many years its rates for passenger transportation, upon a uniform principle or basis, disregarding state lines. Its respective rates on merchandise, on grain and similar products, on coal, on live stock and on lumber, and during many years for passengers, are and have been the same for similar distances upon local shipments within either Wisconsin, Minnesota or North Dakota, and upon interstate shipments within that territory.

Considering the conditions above described, it is and has been utterly impossible to apply in either of said states a materially
11 different plan, system or scale of tariffs upon passengers or upon merchandise of said commodities or a materially lower plan, system or scale of such tariffs upon local shipments within any of said states from those applied upon interstate shipments.

IX.

The tariffs of said Railway Company in force prior to September 6, 1906, and May 3, 1907, and affected by the Orders of said Railroad and Warehouse Commission under those dates, and the tariffs of said Railway Company in force prior to May 1, 1907, and affected by said Act of the legislature of the State of Minnesota, approved April 4, 1907, to take effect on said May 1, 1907, and all other tariffs of said Railway Company, were and are reasonable and fair as between different states, and when applied locally within states, were and are reasonable and fair as compared with*in* the interstate tariffs.

The tariffs prescribed by said Order of the Railroad and Warehouse Commission under date September 6, 1906, and those pre-

scribed by said Act of the legislature of the State of Minnesota, approved April 18, 1907, are constructed upon the principle of a charge for terminal service plus a per mile charge for hauling service, the hauling service charge per mile being materially higher for short distances than for long; and, after a distance is reached of from two hundred to three hundred miles, the
12 tariff is made upon the principle of adding a constant and very small hauling charge for additional distances. The principle or ratio of increase for additional distances above two hundred miles as prescribed in said Order and said Act, respectively, is so small as not to furnish sufficient revenue to pay the actual cost of hauling such additional distance, and is, therefore, unreasonable and confiscatory.

The roads of said Railway Company are well and judiciously located, and were built in obedience to public necessity, and are properly equipped and built, having reference to the business of the country, and that reasonably to be expected, and are well and economically operated. Its property represents an actual and fair value of not less than $350,000,000, and it could not, as your orators believe, be reproduced for that sum.

X.

Between the distances of two hundred and fifty miles and three hundred and twenty miles from eastern terminals said Railway Company has many stations in the State of Minnesota, and also in the State of North Dakota, the stations in each state producing substantially the same commodities principally, i. e., wheat and other grains, and cattle and other live stock, and consuming substantially the same products, including lumber and coal.

Your orators know of no principle upon which said Railway Company can legally apply to these stations beyond the Minne-
13 sota state line a materially higher scale of rates, whether for passengers or for freight, than it applies to stations within the State of Minnesota.

As applied to said Railway Company, having regard to the conditions above described, said Orders and said respective Acts operate directly and necessarily upon interstate commerce, and are regulations of such commerce in violation of the exclusive power granted to congress by the Constitution of the United States.

If the States of Wisconsin, North Dakota, Montana, Idaho, Washington and Oregon, through which the main line of said Railway Company passes, should each of them establish rates like those established by said Orders and said respective Acts, the result would be that the interstate rate which might be charged by said Railway Company for transportation of passengers or freight, as the case might be, could not in practice be greater than the sum of the respective local rates, and, therefore, such interstate rate would be wholly established and governed by the rates so established by such respective states, and not by the laws of the United States; and, moreover, such interstate rate so established would be wholly non-compensatory to said Railway Company, and confiscatory, with the

result that said Railway Company would be deprived of its property without due process of law, in violation of the Constitution of the United States.

Your orators are advised and believe that the passenger
14 tariffs charged by said Railway Company prior to the first day of May, 1907, upon which date said Act of April 4, 1907, by its terms took effect, for transportation within the state of Minnesota, were reasonable and low. Such rates have for a long time past been low, and have not yielded a fair and reasonable return upon the investment in said lines of railway and the equipment necessary to perform the service of such transportation. Such rates for local transportation of passengers within the State of Minnesota have not been high when compared with the rates maintained and charged by said company in other states through which its lines of railway run, but have been equal thereto, and the same have not been unreasonably high as compared with the rates charged by said Railway Company for its interstate transportation of passengers.

The cost and expense of transporting passengers between stations in said State of Minnesota is far greater per mile than the cost and expense of interstate traffic which moves for longer distances. The cost and expense incident to the transportation of passengers within the State of Minnesota has largely increased during recent years. Salaries and wages of employés have been largely increased from year to year, and the cost of all materials used in the maintenance and repair of the lines of said Railway Company has increased within the last few years, and particularly within the past year, more than twenty-five (25) per cent. The passenger rate prescribed by said Act of April 4, 1907, will not, if the same be enforced in cur-
15 rent and future years, afford said Railway Company a sufficient revenue to pay the cost of transacting such passenger business upon its lines within the State of Minnesota, and will not, if the same be enforced, yield any return whatever upon the investment of said Railway Company in its properties, or the reasonable value thereof, and will, therefore, be not only non-compensatory but also confiscatory, and will deprive said Railway Company of its property without due process of law, in violation of the Constitution of the United States.

While the immediate effect of said Orders and of said Act, approved April 18, 1907, if it could be confined to the State of Minnesota, might not be to take the property of said Railway Company without due process of law, yet if the principle upon which the tariffs are made, as above described, should be applied to the long haul interstate business of said company, and if the percentages of reduction effected by the said Orders and said Act should be applied to said company's local business in other states (which is now being transacted upon rates fair and equal by comparison with said company's Minnesota rates prior to said Orders and said Act), they would operate to confiscate the railroad of said company, and to deprive it of property without due process of law, in violation of the Constitution of the United States, because such measure of reduction would leave said company without any net earnings whatever from its property.

16 XI.

Your orators are now, and for more than two years last past continually have been, shareholders in the said Northern Pacific Railway Company, each owning over two hundred (200) shares therein, which are worth and of the value of more than one hundred dollars ($100.00) per share; and they bring this bill in their own behalf, and in behalf of all other stockholders in said Railway Company similarly situated who may join therein. Prior to the institution of this suit, and after the passage of said Acts, your orators demanded of the president and managing directors of the said Northern Pacific Railway Company that they cease obedience to said order of said commission, and that said rates, as set forth in said passenger and freight bills, respectively, should not be put into effect, and that said corporation, its officers and directors, institute proper suit or suits to prevent said rates from continuing or becoming effective, as the case may be, and to have the same declared illegal; and that the said corporation, its president and directors, have positively declined and refused so to do. This suit is not in any manner or to any extent a collusive one, to confer on the Court of the United States jurisdiction of a case of which it could not otherwise have cognizance.

17 XII.

Every freight shipment which said Orders or said Act of April 18, 1907, seek to affect, and every passenger carried by said Railway Company may, if said Railway Company shall fail to continue to observe and keep in force or to observe and put in force the same, as the case may be, result in an action against said company or a criminal proceeding against its officers, directors, agents or employés; and it will result in an endless number of actions at law and criminal proceedings.

If said Railway Company, its officers, directors, agents and employés shall cease obedience to the said Order of the said Railroad and Warehouse Commission of September 6, 1906, or shall refuse obedience to said Order of May 3, 1907, said commission and said Edward T. Young, as Attorney General of the State of Minnesota, in behalf of said commission, will, as your orators are advised and believes, institute proceedings by mandamus, or otherwise, against said Railway Company, its officers, directors, agents or employés, to enforce said Orders and all the provisions thereof, and threaten to and will take other proceedings against said company, its officers, directors, agents and employés, to the same end and for the same purpose.

If said Railway Company, its officers, directors, agents and employés shall fail or refuse to keep in force the tariff prescribed by the said Act of April 4, 1907, or fail or refuse to put in force

18 and effect the tariffs prescribed by said Act of April 18, 1907, said defendant Edward T. Young will, as your orators are advised and believe, institute mandamus or other proceedings for the purpose of enforcing said Acts, and each thereof, and the provisions and penalties thereof.

In consideration whereof, and forasmuch as your orators are remediless in the premises by the strict rules of the common law, and can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, your orators pray that said Acts of the legislature of the State of Minnesota, and each of them, and said Orders of said Railroad and Warehouse Commission, and each of them, be declared to be in violation of the Constitution of the United States, and therefore void and of no effect, so far as the said Northern Pacific Railway Company, its officers, directors, agents and employés, are concerned, and that said Northern Pacific Railway Company, its officers, directors, agents and employés, be temporarily and permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by said Order of September 6, 1906, or the passenger rate set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs set forth in said Act of April 18, 1907, or those set forth in said Order of May 3, 1907, or from reducing its tariffs to the figures set forth in said last named Act, or said last named Order.

That the said Edward T. Young, as Attorney General of
19 the State of Minnesota, and Ira B. Mills, Charles F. Staples and William E. Young, as the Railroad and Warehouse Commission of the State of Minnesota, be temporarily and permanently restrained and enjoined from any attempt to compel said Railway Company to observe, publish, post, or put in force said rates, or any of them, as fixed by said Order of September 6, 1906, or said Order of May 3, 1907, and further be temporarily and permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés, to enforce any penalties or remedies for the violation by said Railway Company of said Orders of either of them.

That said Edward T. Young, as Attorney General, be temporarily and permanently enjoined and restrained from taking any action, step or proceeding against said Railway Company, its officers, agents or employés, to enforce the penalties and remedies specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

And that the defendants, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, and other shippers affected by this proceeding, be temporarily and permanently enjoined and restrained from instituting any action for the violation of said Orders or Acts, or either of them, or from demanding that any of the rates contained therein, or either of them, be given to said shippers, or any of them; and that your orators may have such other and further relief as may be
20 just and equitable.

And may it please your honors, to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Northern Pacific Railway Company, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, commanding them, and each of them, on a day

certain therein to be named, and under a certain penalty, to be and appear before this honorable court, then and there to answer, but not under oath (answer under oath being expressly waived) all and singular the premises, and to stand to and perform and abide by such order, direction and decree as may be made against them in the premises; and that, pending the final hearing of this cause, a temporary restraining order may be issued as above prayed, and your orators will ever pray, etc.

CHARLES E. PERKINS
DAVID C. SHEPARD,
By JARED HOW, *Their Solicitor.*

HOW, BUTLER & MITCHELL,
EDWARD S. ROBERT,
Solicitors for Complainants.

21 STATE OF MINNESOTA,
County of Ramsey, ss:

I, David C. Shepard, upon oath, say that I am one of the complainants in the above entitled bill, which I have read. I know the contents thereof, and the same are true of my own knowledge, except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

DAVID C. SHEPARD.

Subscribed and sworn to before me this 29th day of May 1907.

[SEAL.] KENNETH G. BRILL,
Notary Public, Ramsey County, Minn.

My commission expires Jan. 20, 1913.

EXHIBIT I.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Investigation of the Reasonableness of the Merchandise and Commodity Tariffs of Rates and Charges Between Stations in the State of Minnesota on the Several Lines of Railroad.

In the above entitled matter, the Commission having hear- the evidence, finds as facts in relation to the merchandise rates on the line of the Northern Pacific Railway Company

22 First. That the Northern Pacific Railway Company is a corporation, organized and incorporated under the laws of the State of Wisconsin, and is operating a railroad through various parts of the State of Minnesota, and carries freight and passengers for hire.

Second. That the terminal and distance freight rates on merchandise now charged by the Northern Pacific Railway Company on

classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E," as shown by the so-called "Western Classification," between stations in the State of Minnesota, are unreasonable.

Third. That the merchandise rates on classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E," as shown in exhibit "A," hereto attached and made a part of this order (according to said Western Classification, with exceptions and changes made by the Minnesota Commission), are reasonable maximum rates between all stations on the line of the Northern Pacific Railway Company in the State of Minnesota, and what are known as terminal or distributing stations on said railway in said state, and that a rate five cents higher than the rate shown in exhibit "A" is a reasonable maximum rate between stations on the line of said railway in this state, neither of which is a terminal or distributing station.

It is therefore ordered, that the reasonable maximum rates on said classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E" are reduced
23 and fixed at the rates shown in said exhibit "A" between all stations on the line of said railway in the State of Minnesota, and what are now known as terminal and distributing stations on said railway in said state, to-wit: Minneapolis, St. Paul, Duluth, Stillwater, St. Cloud, Brainerd, Fergus Falls, Moorhead, Crookston, Sauk Center, Detroit, and such other stations as may hereafter be made terminal or distributing stations, and the Northern Pacific Railway Company is hereby forbidden to charge any higher rate than that named in said exhibit "A." This order does not prevent the charging of a lower rate than that provided by exhibit "A," but in case a less rate is charged on one class, all classes must be reduced so as to preserve the relative relations between classes fixed in exhibit "A."

Until the further order of the Commission, said Railway Company may charge a rate five per cent. more than shown in exhibit "A" for shipments between stations, neither of which is a terminal or distributing station.

This order shall be in force thirty days after its service.

Dated St. Paul, Minn., September 6th, 1906.

By the Commission,

A. O. CLAUSEN, *Secretary.*

24 *Note.*

1. The matter of joint rates will be the subject of a future order when the necessity for the same is presented.

2. When issuing a schedule of rates, the fraction of a cent, 1 to 24 one-hundredths may be dropped; 25 to 75 one-hundredths may be called one-half cent, and 76 to 99 one-hundredths may be called one cent.

3. In case the Railway Company, in putting in a new schedule of rates, fails to so adjust the "in" rates as to protect the jobbers at the distributing stations other than St. Paul, Minneapolis and Duluth, the Commission will undertake to make the necessary adjustment.

25

"EXHIBIT A."

ST. PAUL, MINNESOTA, *September* 7, 1906.

Railroad and Warehouse Commission of Minnesota.

Schedule of Reasonable Maximum Terminal and Distributing Merchandise Rates.

When rates for exact distance are not shown, the rates for the next greater distance as shown on Tariff may govern.

Governed by Western Classification, with exceptions and changes made by the Railroad and Warehouse Commission of Minnesota.

Inter-station Distance rates (other than terminal or Distributing Rates) can be made based on 5% above the rates shown in this schedule.

When preparing a schedule of rates the fraction of a mill, 1 to 5/10ths may be dropped; 6 to 9/10th- may be called one mill.

26

Rates for—	MERCHANDISE. In cents per 100 lbs.				SPECIAL CARLOAD CLASSES. In cents per 100 lbs.					
	Percentage scale relation.									
	100%	83⅓%	66⅔%	50%	40%	45%	35%	30%	25%	20%
	1	2	3	4	Fifth class.	A	B	C	D	E
5 miles	12.00	10.00	8.00	6.00	4.80	5.40	4.20	3.60	3.00	2.40
10 miles	12.98	10.82	8.65	6.49	5.19	5.84	4.55	3.89	3.25	2.60
15 miles	13.96	11.63	9.31	6.98	5.58	6.28	4.89	4.19	3.49	2.80
20 miles	14.94	12.45	9.96	7.47	5.98	6.72	5.23	4.48	3.74	2.99
25 miles	15.92	13.27	10.61	7.96	6.37	7.16	5.57	4.78	3.98	3.18
30 miles	16.90	14.08	11.27	8.45	6.76	7.61	5.92	5.07	4.23	3.38
35 miles	17.88	14.90	11.92	8.94	7.15	8.05	6.26	5.36	4.47	3.58
40 miles	18.86	15.72	12.57	9.43	7.54	8.49	6.70	5.66	4.72	3.77

45 miles	19.84	16.53	13.22	9.92	7.94	8.93	6.94	5.95	4.96	3.97
50 miles	20.82	17.35	13.88	10.41	8.33	9.37	7.29	6.25	5.21	4.16

27

55 miles	21.80	18.17	14.53	10.90	8.72	9.81	7.63	6.54	5.45	4.36
60 miles	22.78	18.98	15.19	11.39	9.11	10.25	7.97	6.83	5.70	4.56
65 miles	23.76	19.80	15.84	11.88	9.50	10.69	8.32	7.13	5.94	4.75
70 miles	24.74	20.62	16.49	12.37	9.90	11.13	8.66	7.42	6.19	4.95
75 miles	25.72	21.43	17.14	12.86	10.29	11.58	9.01	7.72	6.43	5.14
80 miles	26.70	22.25	17.80	13.35	10.68	12.02	9.35	8.01	6.68	5.34
85 miles	27.68	23.07	18.45	13.84	11.07	12.46	9.69	8.30	6.92	5.54
90 miles	28.66	23.88	19.10	14.33	11.46	12.90	10.03	8.60	7.17	5.73
95 miles	29.64	24.70	19.76	14.82	11.86	13.34	10.37	8.89	7.41	5.93
100 miles	30.62	25.52	20.41	15.31	12.25	13.78	10.72	9.19	7.66	6.12
105 miles	31.60	26.33	21.06	15.80	12.64	14.22	11.06	9.47	7.90	6.32
110 miles	32.58	27.16	21.72	16.29	13.03	14.66	11.40	9.77	8.15	6.52
115 miles	33.56	27.97	22.37	16.78	13.42	15.10	11.75	10.07	8.39	6.71
120 miles	34.54	28.78	23.02	17.27	13.82	15.54	12.09	10.36	8.64	6.91
125 miles	35.52	29.60	23.68	17.76	14.21	15.98	12.43	10.66	8.88	7.10
130 miles	36.50	30.42	24.33	18.25	14.60	16.43	12.78	10.95	9.13	7.30
135 miles	37.48	31.23	24.98	18.74	14.99	16.87	13.12	11.24	9.37	7.50
140 miles	38.46	32.05	25.64	19.23	15.38	17.31	13.46	11.54	9.62	7.69
145 miles	39.44	32.87	26.29	19.72	15.78	17.75	13.80	11.83	9.86	7.89

28

150 miles	40.42	33.68	26.94	20.21	16.17	18.19	14.15	12.13	10.11	8.08
155 miles	41.40	34.50	27.60	20.70	16.56	18.63	14.49	12.42	10.35	8.28
160 miles	42.38	35.32	28.25	21.19	16.95	19.07	14.83	12.71	10.60	8.48
165 miles	43.36	36.13	28.90	21.68	17.34	19.51	15.18	13.01	10.84	8.67
170 miles	44.34	36.95	29.56	22.17	17.74	19.95	15.52	13.30	11.09	8.87

Rates for—	MERCHANDISE. In cents per 100 lbs. Percentage scale relation.					SPECIAL CARLOAD CLASSES. In cents per 100 lbs.				
	100% 1	83⅓% 2	66⅔% 3	50% 4	40% Fifth class	45% A	35% B	30% C	25% D	20% E
175 miles	45.32	37.77	30.21	22.66	18.13	20.39	15.86	13.60	11.33	9.06
180 miles	46.30	38.58	30.86	23.15	18.52	20.84	16.21	13.89	11.58	9.26
185 miles	47.28	39.40	31.52	23.64	18.91	21.28	16.55	14.18	11.82	9.46
190 miles	48.26	40.22	32.17	24.13	19.30	21.72	16.89	14.48	12.07	9.65
195 miles	49.24	41.03	32.82	24.62	19.70	22.16	17.23	14.77	12.31	9.85
200 miles	50.22	41.85	33.48	25.11	20.09	22.60	17.58	15.07	12.56	10.00
210 miles	51.20	42.66	34.13	25.60	20.48	23.04	17.92	15.36	12.80	10.24
220 miles	52.18	43.48	34.78	26.09	20.87	23.48	18.26	15.65	13.05	10.43
230 miles	53.16	44.30	35.44	26.58	21.26	23.92	18.61	15.95	13.29	10.63
240 miles	54.14	45.11	36.09	27.07	21.66	24.36	18.95	16.24	13.54	10.83
250 miles	55.12	45.93	36.74	27.56	22.05	24.80	19.29	16.54	13.78	11.00
260 miles	56.10	46.75	37.40	28.05	22.40	25.25	19.64	16.83	14.03	11.22
270 miles	57.08	47.56	38.05	28.54	22.83	25.69	19.98	17.12	14.27	11.42
280 miles	58.06	48.38	38.70	29.03	23.22	26.13	20.32	17.41	14.52	11.62
29										
290 miles	59.04	49.20	39.36	29.52	23.62	26.57	20.66	17.71	14.76	11.80
300 miles	60.02	50.01	40.01	30.01	24.01	27.01	21.01	18.01	15.01	12.00
310 miles	61.00	50.83	40.66	30.50	24.40	27.45	21.35	18.30	15.25	12.20
320 miles	61.98	51.65	41.32	30.99	24.79	27.89	21.69	18.59	15.50	12.40
330 miles	62.96	52.46	41.97	31.48	25.18	28.33	22.04	18.89	15.74	12.59
340 miles	63.94	53.28	42.62	31.97	25.58	28.77	22.37	19.18	15.99	12.79
350 miles	64.92	54.10	43.28	32.46	25.97	29.21	22.72	19.48	16.23	12.98

360 miles.....	65.90	54.91	43.93	32.95	26.36	29.66	23.07	19.78	16.48	13.18
370 miles.....	66.88	55.73	44.58	33.44	26.75	30.10	23.41	20.06	16.72	13.38
380 miles.....	67.86	56.55	45.24	33.93	27.14	30.54	23.75	20.36	16.97	13.57
390 miles.....	68.84	57.36	45.89	34.42	27.54	30.98	24.19	20.65	17.21	13.77
400 miles.....	69.82	58.18	46.54	34.91	27.93	31.32	24.44	20.95	17.46	13.96
420 miles.....	70.80	59.00	47.20	35.40	28.32	31.86	24.78	21.24	17.70	14.16
440 miles.....	71.78	59.81	47.85	35.89	28.71	32.39	25.12	21.53	17.94	14.36
460 miles.....	72.76	60.63	48.50	36.38	29.10	32.74	25.47	21.83	18.19	14.55
480 miles.....	73.74	61.45	49.15	36.87	29.50	33.18	25.81	22.12	18.44	14.75
500 miles.....	74.72	62.26	49.32	37.36	29.89	33.62	26.15	22.42	18.68	14.94

30 EXHIBIT 2.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Commodity Rates to Distributing Centers Hereinafter Named on the Line of the Northern Pacific Railway.

This matter having come before the Commission, and the evidence therein having been taken and concluded on the 2nd day of May, 1907, the Commission finds that the following named places, all in the State of Minnesota, having heretofore enjoyed distributing rates. are entitled to be known as distributing centers or terminals, viz.:

East Grand Forks,
Fergus Falls,
Brainerd,
Sauk Center,
Crookston,
Breckenridge,
Detroit,
Saint Cloud,
Moorhead.

And that the rates named in "Exhibit C," hereto annexed, are reasonable maximum rates in carload lots from the terminals of St. Paul, Minneapolis and Minnesota Transfer and Duluth to said distributing centers on the freight articles mentioned in said exhibit, and that the regulations and minimums marked upon said exhibit are reasonable minimums and regulations in regard to such rates.

It is therefore ordered, that the rates between St. Paul, Minneapolis and Minnesota Transfer and Duluth and said distributing points above named, over the Northern Pacific Railway, are
31 hereby fixed as in "Exhibit C;" and said Railway Company is hereby forbidden to charge any higher or greater rates than the rates above named on the commodities named in "Exhibit C."

This order shall take effect on the 3rd day of June, 1907.

By the Commission,

A. C. CLAUSEN, *Secretary.*

Dated St. Paul, Minn., May 3rd, 1907.

"EXHIBIT C."

Referred to in the Commissioners' Order.

Railroad and Warehouse Commission Schedule of Reasonable Carload Commodity Rates.

ST. PAUL, MINN., *May 3rd,* 1907.

Commodities.

Cider and Vinegar, straight or mixed C. L., minimum weight 30,000 pounds.

Pickles, Kraut, Cucumber, Tomato, Cauliflower and Onion, also

Vinegar, in tin cans, boxed or crated, in glass or stone, boxed or in barrels, kegs, kits, pails or tubs; also Table Sauces, including Catsup, Horseradish, prepared, Mustard prepared, Pepper Sauce and Salad Dressing, in glass, boxed; in tin cans, boxed or crated, or in bulk in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

32 Condensed Milk and Evaporated Cream, in glass, boxed, in cans, jacketed, boxed or crated, or in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

Fruits, Vegetables, Cove Oysters and Catsup, in tin cans, boxed or crated, or in glass or stone jars, boxed, straight or mixed C. L., minimum weight 30,000 pounds.

Paper—Building, Roof and Wrapping, in bundles, rolls, boxes or crates; also Paper Bags in bundles, straight or mixed C. L., minimum weight 30,000 pounds.

Sugar (not Maple), C. L., minimum weight 30,000 pounds.

Syrup, Glucose, Jelly, Molasses, Preserves and Fruit Butter, in wood, in tin cans, boxed or crated, or in glass or jugs, boxed; C. L., minimum weight 30,000 pounds.

Coffee, green or roasted, in bags, barrels or drums, also in packages, tin cans or pails, crated or boxed, in straight or mixed C. L., minimum weight 24,000 pounds.

Rice, in bags or in packages, boxed; Straight or mixed C. L., minimum weight 30,000 pounds.

Beans, dry, in bags, C. L., minimum weight 30,000 pounds.

Canned Sardines, in tin cans, boxed or crated, C. L., minimum weight 30,000 pounds.

33 "EXHIBIT C"—Continued.

Referred to in Commissioners' Order.

Reasonable Maximum Carload Commodity Rates Over the Lines of the Northern Pacific Railway Company on the Commodities Named in this Exhibit from St. Paul, Minneapolis and Minnesota Transfer.

To—	Rates in cents per 100 pounds.	From Duluth.
East Grand Forks	21.40	21.79
Crookston	20.62	
Thief River Falls	22.58	
Fergus Falls	15.52	
Breckenridge	17.48	
Moorhead	18.66	
Sauk Center	10.82	
St. Cloud	6.50	

Exhibit 8.

Comparison of Terminal Rates at Important Points.

Station.		Classes In cents per 100 lbs. 1	2	3	4	5	A	B	C	D	E
Anoka	27 miles	15	13	10	8	6	6	5	5	4	3
		14.9	12.4	10.	7.5	6.	6.7	5.2	4.5	3.7	3.
Elk River	39 miles	21	18	14	11	8	8	7	6	5	4
		16.9	14.1	11.3	8.4	6.8	7.6	5.9	5.1	4.2	3.4
Becker	56 miles	30	26	20	15	12	12	11	9	7	6
		20.8	17.3	13.9	10.4	8.3	9.4	7.3	6.2	5.2	4.2
St. Cloud	74 miles	34	29	22	17	14	14	12	10	8	7
		23.8	19.8	15.8	11.9	9.7	10.7	8.3	7.1	5.9	4.7
Little Falls	106 miles	41	35	27	21	16	16	14	12	10	8
		30.6	25.5	20.4	15.3	12.2	13.8	10.7	9.2	7.7	6.1
Staples	140 miles	47	40	31	24	19	19	16	14	11	9
		36.5	30.4	24.3	18.2	14.6	16.4	12.8	11.	9.1	7.3
Wadena	158 miles	50	43	33	25	20	20	18	15	12	10
		40.4	33.7	26.9	20.2	16.2	18.2	14.1	12.1	10.1	8.1
Perham	181 miles	55	47	36	28	22	22	19	17	13	11
		45.3	37.8	30.2	22.7	18.1	20.4	15.9	13.6	11.3	9.1
Detroit	202 miles	59	50	39	30	24	24	21	18	14	12
		49.2	41.	32.8	24.6	19.7	22.2	17.2	14.8	12.3	9.8
Winnipeg Junction	223 miles	63	54	42	32	25	25	22	19	15	13
		52.2	43.5	34.8	26.1	20.9	23.5	18.3	15.6	13.	10.4
Twin Valley	248 miles	67	57	44	34	27	27	23	20	16	13
		54.1	45.1	36.1	27.1	21.7	24.4	18.9	16.2	13.5	10.8
Crookston	291 miles	67	57	44	34	27	27	23	20	16	13
		59.	49.2	39.4	29.5	23.6	26.6	20.7	17.7	14.8	11.8
East Grand Forks	318 miles	67	57	44	37	27	27	23	20	16	13
		61.	50.8	40.7	30.5	24.4	27.	21.3	18.3	15.2	12.2

Large type figures show former rates.
Small type figures show present rates which are those of the Minnesota Railway Commission.

EXHIBIT 3.—Continued.

Comparison of Minnesota Distance Tariff Rates.

Distance.	Classes In cents per 100 lbs. 1	2	3	4	5	A	B	C	D	E
25 miles	19	16	13	10	8	8	7	6	5	4
	16.7	13.9	11.1	8.4	6.7	7.5	5.8	5.	4.2	3.3
50 miles	31	26	20	16	12	12	11	9	7	6
	21.9	18.2	14.6	10.9	8.7	9.8	7.6	6.6	5.5	4.4
75 miles	38	32	25	19	15	15	13	11	9	8
	27.	22.5	18.	13.5	10.8	12.2	9.5	8.1	6.7	5.4
100 miles	43	37	28	22	17	17	15	13	10	9
	32.1	26.8	21.4	16.1	12.9	14.5	11.2	9.6	8.	6.4
125 miles	48	41	32	24	19	19	17	14	12	10
	37.3	31.1	24.9	18.6	14.9	16.8	13.	11.2	9.3	7.4
150 miles	53	45	35	27	21	21	19	16	13	11
	42.4	35.4	28.3	21.2	17.	19.1	14.9	12.7	10.6	8.5
175 miles	58	49	38	29	23	23	20	17	14	12
	47.6	39.7	31.7	23.8	19.	21.4	16.6	14.3	11.9	9.5
200 miles	63	54	42	32	25	25	22	19	15	13
	52.7	43.9	35.1	26.4	21.1	23.7	18.5	15.8	13.2	10.5
220 miles	67	57	44	34	27	27	23	20	16	13
	54.8	45.6	36.5	27.4	21.9	24.6	19.2	16.4	13.7	10.9
240 miles	71	60	47	36	28	28	25	21	17	14
	56.8	47.4	37.9	28.4	22.7	25.6	19.9	17.	14.2	11.4
260 miles	75	64	50	38	30	30	26	23	18	15
	58.9	49.1	39.3	29.4	23.5	26.5	20.6	17.7	14.7	11.8
280 miles	79	67	52	40	32	32	28	24	19	16
	61.	50.8	40.6	30.5	24.4	27.4	21.3	18.3	15.2	12.2
300 miles	83	71	55	42	33	33	29	25	20	17
	63.	52.5	42.	31.5	25.2	28.4	22.1	18.9	15.8	12.6

Large type figures show former rates.
Small type figures show present rates which are those of the Minnesota Railway Commission.

36 EXHIBIT 4.

H. F. 1190. Chap. 232.

An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission.

Be It Enacted by the Legislature of the State of Minnesota:

SECTION 1. For the purposes of this act the commodities hereinafter named are classified as follows: Wheat, flax seed, broom corn seed, hemp seed, millet seed, popcorn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, and all uncooked grain or cereal products manufactured from wheat, shall constitute class eleven (11); corn, oats, rye, barley, alfalfa feed, alfalfa meal, bran, brewers' grits, brewers' meal, brewers' refuse (dry), chopped feed, other than wheat chops, corn flour, corn meal, cotton seed cake, cotton seed hulls, cotton seed meal, gluten feed, gluten meal, grain screenings, hominy feed, kafir corn, linseed cake, linseed meal, middlings, shorts, sorghum seed, speltz, wild mustard seed, oat groats, rolled oats, oat dust, oat hulls, oat meal, rolled rye, rye flour, malt, pearl barley and all uncooked grain or cereal products manufactured from corn, oats or rye, shall constitute class twelve (12); lumber, lath, shingles, sash, doors and blinds shall constitute class thirteen (13); sheep (when carried in double-decked cars) and cattle shall constitute class fourteen
37 (14); sheep (when carried in single decked cars) and hogs shall constitute class fifteen (15); hard coal shall constitute class sixteen (16); soft coal shall constitute class seventeen (17).

SECTION 2. The following are hereby established and declared to be the reasonable maximum rates to be charged by Railroad Companies as common carrie-s of property in the State of Minnesota, for the transportation, in car load lots, of the commodities belonging to the clas-es named in section one (1) of this act, between stations in the State of Minnesota for the distances named in the following schedules, to-wit:

Distance in miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs.	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars & cents per ton.	Rates for commodities in classification No. 17 in dollars & cents per ton.
5	2.7	2.7	2.7	4.4	4.9	.54	.44
10	3.3	2.8	3.3	5.	5.5	.62	.49
15	3.8	3.4	3.8	5.5	6.3	.63	.51
20	4.4	3.8	4.4	6.3	6.8	.65	.52
25	4.6	4.	5.4	6.7	7.6	.69	.54
30	4.8	4.2	5.6	7.4	8.3	.70	.57
35	5.	4.5	5.8	7.9	9.	.72	.58
40	5.2	4.6	6.	8.6	9.7	.74	.59
45	5.4	4.8	6.3	9.2	10.3	.75	.61
50	5.7	5.	6.5	9.8	11.	.77	.62
55	5.9	5.1	6.8	10.	11.3	.81	.64
38							
60	6.1	5.3	7.0	10.2	11.5	.83	.65
65	6.3	5.5	7.4	10.5	11.8	.85	.69
70	6.5	5.8	7.5	10.7	12.	.87	.70
75	6.7	6.	7.7	10.9	12.3	.89	.72
80	7.	6.2	8.1	11.1	12.5	.93	.74
85	7.2	6.3	8.3	11.3	12.7	.95	.75
90	7.4	6.5	8.5	11.5	13.	.97	.77
95	7.6	6.7	8.7	11.8	13.3	.99	.80
100	7.8	7.	9.	12.	13.5	1.01	.82
105	7.9	7.	9.2	12.2	13.7	1.04	.83
110	8.1	7.	9.3	12.4	13.9	1.06	.84
115	8.2	7.2	9.4	12.6	14.3	1.07	.85
120	8.2	7.2	9.4	12.8	14.5	1.08	.86
125	8.3	7.3	9.5	13.	14.7	1.10	.87
130	8.4	7.4	9.6	13.3	14.9	1.11	.88
135	8.5	7.4	9.8	13.5	15.3	1.12	.92
140	8.5	7.5	9.8	13.7	15.5	1.16	.93
145	8.6	7.6	9.9	13.9	15.7	1.17	.94
150	8.7	7.6	10.	14.2	15.9	1.19	.95
155	8.8	7.7	10.1	14.4	16.2	1.20	.96
160	8.8	7.8	10.1	14.6	16.4	1.22	.98
165	9.	7.9	10.4	14.8	16.7	1.24	1.00
170	9.	7.9	10.4	15.	16.9	1.29	1.01
175	9.1	8.1	10.6	15.3	17.2	1.31	1.05
180	9.1	8.1	10.6	15.5	17.4	1.33	1.07
185	9.3	8.2	10.7	15.7	17.6	1.35	1.09
190	9.4	8.3	10.8	15.9	17.9	1.37	1.10
195	9.5	8.3	10.9	16.1	18.2	1.42	1.12
200	9.6	8.4	11.	16.3	18.4	1.44	1.16

Distance in miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs.	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars & cents per ton.	Rates for commodities in classification No. 17 in dollars & cents per ton.
210	9.7	8.5	11.1	16.6	18.6	1.48	1.19
220	9.8	8.6	11.2	16.8	18.8	1.54	1.22
230	9.9	8.7	11.4	17.	19.1	1.58	1.28
39							
240	10.	8.8	11.6	17.2	19.4	1.63	1.31
250	10.2	8.9	11.8	17.4	19.6	1.68	1.34
260	10.3	9.1	11.9	17.6	19.8	1.72	1.37
270	10.5	9.3	12.	17.9	20.2	1.78	1.42
280	10.6	9.4	12.2	18.1	20.4	1.82	1.46
290	10.8	9.5	12.4	18.3	20.6	1.87	1.49
300	10.9	9.6	12.5	18.5	20.8	1.92	1.54
310	11.	9.7	12.6	18.7	21.1	1.94	1.56
320	11.1	9.8	12.8	19.	21.4	1.96	1.57
330	11.2	9.9	12.9	19.2	21.6	1.99	1.59
340	11.3	9.9	13.1	19.4	21.8	2.02	1.60
350	11.4	10.	13.2	19.6	22.1	2.04	1.63
360	11.5	10.1	13.3	19.8	22.3	2.06	1.66
370	11.7	10.2	13.4	20.	22.6	2.08	1.67
380	11.8	10.3	13.5	20.3	22.8	2.11	1.69
390	11.9	10.5	13.6	20.5	23.1	2.13	1.70
400	12.	10.6	13.7	20.7	23.3	2.16	1.72

SECTION 3. When the exact distance which a commodity is transported is not given in the foregoing schedule, the carrier may charge the rate specified in the said schedule for the next greater distance. In order to constitute a car load, within the meaning of this act, the weight of the commodity in any one car shall be at least as follows: Class eleven (11) and class twelve (12), twenty-four thousand (24,000) pounds; class thirteen (13), twenty thousand (20,000) pounds; class fourteen (14), nineteen thousand (19,000) pounds; class fifteen (15), fifteen thousand (15,000) pounds; clas-es sixteen (16) and seventeen (17), thirty thousand (30,000) pounds.

40 SECTION 4. No Railroad Company, which is a common carrier of property within the State of Minnesota, shall charge, take or receive any greater sum for carrying within this state, between stations therein, any of the commodities named in this act than the respective amounts set forth and provided for in section two of this act for the respective distances therein named.

SECTION 5. This act shall not in any manner affect the power or authority of the Railroad and Warehouse Commission, except that no duty shall rest upon the Railroad and Warehouse Commission to enforce any rates specifically fixed by this or any other statute

of this state. Whenever in a proceeding regularly pending before the Railroad and Warehouse Commission, it shall be made to appear to the satisfaction of said Commission that the rates herein prescribed are unreasonable, it may by order fix higher or lower rates for the transportation of any of the commodities herein mentioned, over the line of any railroad in this state, and such rates when so fixed shall supersede the rates herein prescribed upon said line of railroad, and shall be enforced as prescribed by the law relating to such orders, and until such order shall have been made by said Railroad and Warehouse Commission the rates herein prescribed shall be the exclusive legal maximum rates for the transportation of the commodities herein enumerated between points within this
41 state.

SECTION 6. Every railroad company transacting the business of a common carrier within this state shall adopt and publish and put into effect rates not exceeding the charges specified herein for the transportation by it, between stations upon its line of road in this state, of the commodities named in this act; and every officer, director, traffic manager or agent or employé of such railroad company, exercising any authority or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by said railroad company of rates not exceeding those specified in this act; and any officer, director or such agent or employé of any such railroad company who violates any of the provisions of this section, or who causes, or counsels, advises or assists any such railroad company to violate any of the provi-ions of this section, shall be guilty of a misdemeanor, and may be prosecuted therefor in any county into which its railroad extends, and in which it has a station, and upon conviction thereof be punished by imprisonment in the county jail for a period not exceeding ninety days.

SECTION 7. If at the time of the taking effect of this act any railroad is maintaining a rate between any two stations in this state that is less than the rate herein pre-cribed for the same distance, this act shall not be construed as authorizing the raising of such rate.
42 & 43 SECTION 8. This act shall take effect and be in force from and after June 1, 1907.

L. H. JOHNSON,
Speaker of the House of Representatives.
ADOLPH O. EBERHART,
President of the Senate.

House File No. 1190.

An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad and Warehouse Commission.

Passed the House of Representatives the ninth (9th) day of April, one thousand nine hundred and seven (1907). Senate amendment concurred in and repassed as amended the fifteenth (15th) day of April, one thousand nine hundred and seven (1907).

ADOLPH E. L. JOHNSON,
Chief Clerk of the House of Representatives.

Passed the Senate the twelfth (12th) day of April, one thousand nine hundred and seven (1907). Vote by which bill was passed reconsidered; bill amended and repassed as amended the thirteenth (13th) day of April, one thousand nine hundred and seven (1907).

S. A. LANGUM,
Secretary of the Senate.

Approved April 18th, 1907.

JOHN A. JOHNSON,
Governor of the State of Minnesota.

Filed April 18th.

JULIUS A. SCHMALL,
Secretary of State.

EXHIBIT 5.

Distance in miles.	Wheat flour.			Coarse grain.		Lumber.		Sheep, D. D., cattle.		Sheep, S. D., hogs.			Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
5	2.7	4.	3.5	2.7	4.	2.7	3.5	4.4	5.5	4.25	4.9	7.	5½	5½	.54	.60	.44	.60
10	3.3	4.	3.5	2.8	4.	3.3	3.5	5.5	5.5	4.25	5.5	7.	5½	6½	.62	.60	.49	.60
15	3.8	4.5	3.5	3.4	4.5	3.8	4.	5.5	6.	4.25	6.3	7.8	6½	6½	.63	.60	.51	.60
20	4.4	5.	4.5	3.8	5.	4.4	4.5	6.3	6.5	5½	6.8	8.5	8½	8½	.65	.60	.52	.60
25	4.6	5.5	4.5	4.	5.5	5.4	5.	6.7	7.6	6½	7.6	9.9	8½	8½	.69	.60	.54	.60
30	4.8	6.5	5.5	4.2	5.5	5.6	5.5	7.4	8.7	7½	8.3	11.3	9½	9½	.70	.70	.57	.70
35	5.2	6.5	6.	4.5	6.5	5.8	6.	7.9	9.8	8.	9.	12.7	10.	10.	.72	.80	.58	.80
40	5.4	6.5	6.	4.6	6.	6.	6.	8.9	10.9	8½	9.7	14.1	10½	10½	.74	.90	.59	.85
45	5.7	7.	6.5	4.8	6.5	6.3	6.5	9.2	11.4	8.5	10 3	14.8	10½	10½	.75	.90	.61	.85
50	5.9	7.5	7.	5.	7.	6.5	7.	9.8	12.	8.5	11.	15.5	12.	12.	.77	1.00	.62	.90
55	6.1	8.5	7.	5.1	7.5	6.8	7.5	10.	12.5	9.5	11.3	16.2	13½	13½	.81	1.00	.64	.90
60	6.3	8.5	7.	5.3	8.	7.0	8.5	10.2	13.	10.5	11.5	16.9	13½	13½	.83	1.05	.65	.95
70	6.5	9.	7.	5.5	8.5	7.4	8.5	10.5	13.6	10½	11.8	17.6	13½	13½	.85	1.05	.69	.95
75	6.7	9.5	7.	5.8	9.	7.5	9.	10.7	14.2	10½	12.	18.3	14.	13½	.87	1.10	.70	1.00
80	7.	9.5	7.	6.2	9.5	7.7	9.5	10.9	14.7	11.	12.3	19.	14.	14.	.89	1.10	.72	1.00
					9.5	8.1	9.5	11.1	15.3	11.	12.5	18.8	14.	14.	.93	1.15	.74	1.05

EXHIBIT 5—Continued.

Distance in miles.	Wheat flour.			Coarse grain.			Lumber.		Sheep, D. D., cattle.			Sheep, S. D., hogs.			Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
85	7.2	10.	7.5	6.3	10.	7.5	8.3	10.	11.3	15.8	11.5	12.7	20.5	14½	14.5	.95	1.15	.75	1.05
90	7.4	10.5	7.5	6.5	10.5	7.5	8.5	10.5	11.5	16.4	12.	13.	21.2	15.	15½	.97	1.20	.77	1.10
95	7.6	11.	7.5	6.7	11.	7.5	8.7	11.	11.8	16.9	12.	13.3	21.9	15½	15½	.99	1.20	.80	1.10
100	7.8	11.5	7.5	7.	11.5	7.5	9.	11.5	12.	17.4	12.5	13.5	22.6	16	16	1.01	1.25	.82	1.15
105	7.9	12.	8.	7.	12.	8.	9.2	12.	12.2	18.	12½	13.7	23.3	16½	16½	1.04	1.25	.83	1.15
110	8.1	12.	8.	7.	12.	8.	9.3	12.	12.4	18.	13	13.9	23.3	16½	17½	1.06	1.30	.84	1.20
115	8.2	12.5	8.	7.2	12.5	8.	9.4	12.5	12.6	18.5	14.	14.3	24.	16½	18.	1.07	1.35	.85	1.25
120	8.2	12.5	8.2	7.2	12.5	8.5	9.4	12.5	12.8	18.5	14.	14.5	24.7	16½	18.	1.08	1.40	.86	1.30
125	8.3	13.	8.5	7.3	13.	8.5	9.5	13.	13.	19.2	14.	14.7	24.7	16½	18.	1.10	1.45	.87	1.35
130	8.4	13.	9.	7.4	13.	9.	9.6	13.	13.3	19.2	14.	14.9	14.7	16½	18.	1.11	1.50	.88	1.40
135	8.5	13.5	9.	7.4	13.5	9.	9.8	13.5	13.5	19.6	14.	15.3	25.4	16½	18.	1.12	1.55	.92	1.45
140	8.5	13.5	9.	7.5	13.5	9.	9.8	13.5	13.7	19.6	14.	15.5	25.4	16½	18.	1.16	1.60	.93	1.50
145	8.6	14.	9.5	7.6	14.	9.5	9.9	14.	13.9	20.2	14.	15.7	26.2	17.	18.	1.17	1.70	.94	1.60
150	8.7	14.	9.5	7.6	14.	9.5	10.	14.	14.2	20.2	14.	15.9	26.2	17½	18.	1.19	1.75	.95	1.65
155	8.8	14.5	9.5	7.7	14.5	9.5	10.1	14.5	14.4	20.7	14.	16.2	26.8	17½	18½	1.20	1.75	.96	1.65
160	8.8	14.5	9.5	7.8	14.5	9.5	10.1	14.5	14.6	20.7	14.5	16.4	26.8	17½	18½	1.22	1.75	.98	1.65

EXHIBIT 5—Continued.

Distance in miles.	Wheat flour.			Coarse grain.			Lumber.		Sheep, D. D., cattle.			Sheep, S. D., hogs.				Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
165	9.	15.	9.5	7.9	15.	9.5	10.4	15.	14 8	21.3	14.5	16.7	27.5	17¾	18¾	1.24	1.80	1.00	1.70
170	9.	15.	10.	7.9	15.	10.	10.4	15.	15.	21.3	14¾	16.9	27.5	18¼	19¼	1.29	1 85	1.01	1.75
175	9.1	16.	10.	8.1	16.	10.	10.6	15 5	15.3	21.8	15¼	17.2	28.2	18¾	19¾	1.31	1.90	1.05	1.80
180	9.1	16.	10.	8.1	16.	10.	10.6	15.5	15.5	21.8	15¾	17.4	28.2	18¾	20.	1.33	1.90	1.07	1.80
185	9.3	16.5	10.	8.2	16.5	10.	10.7	16.	15.7	22.4	16.	17.6	28.9	...	20.5	1.35	1.90	1 09	1.80
190	9.4	16.5	10.	8.3	16.5	10.	10.8	16.	15.9	22.4	16¼	17.9	28.9	...	20.5	1.37	1.90	1.10	1.80
195	9.5	17.	10.	8.3	17.	10.	10.9	16.5	16.1	22.9	16.5	18 2	29.6	...	21.5	1.42	1 90	1.12	1.80
200	9.6	17.	10.	8.4	17.	10.	11.	16.5	16.3	22.9	17.	18.4	29.6	...	21.5	1.44	1.90	1.16	1.80
210	9.7	17.5	10.5	8.5	17.5	10.5	11.1	17.	16.6	23.4	17.5	18 6	30.3	...	22.	1.48	1.95	1.19	1.85
220	9.8	18.	10.5	8.6	18.	10.5	11.2	17.5	16.8	24.	17¾	18.8	31.1	...	23.5	1.54	2.10	1.22	1.90
230	9.9	18.5	11.	8.7	18.5	11.	11.4	18.	17.	24.5	18.5	19.1	31.8	...	24.	1.58	2.10	1.28	2.00
240	10.	19.	11.	8.8	19.	11.	11.6	18.5	17.2	25.1	18¾	19.4	32.5	...	24¾	1.63	2.10	1.31	2.00
250	10.2	19.5	11.	8.9	19.5	11.	11.8	19.	17.4	25.6	19.	19.6	33.2	...	24¾	1.68	2.10	1.34	2.00
260	10.3	20.	11.	9.1	20.	11.	11.9	19.5	17.6	26.1	19.5	19.8	33.9	...	25.	1.72	2.10	1.37	2.00
270	10.5	20.5	11.	9.3	20.5	11.	12.	20.	17.9	26.7	19¾	20.2	34.6	...	25¼	1.72	2.10	1.42	2.00
280	10.6	21.	11.	9.4	21.	11.	12.2	20.5	18.1	27.3	20.	20.4	35.3	...	25¼	1.82	2.10	1.46	2.00
290	10.8	21.5	11.	9.5	21.5	11.	12.4	21.	18.3	27.8	20¼	20.6	36.	...	26.	1.87	2.10	1.49	2.00

EXHIBIT 5—Continued.

Distance in miles.	Wheat flour.			Coarse grain.			Lumber.		Sheep, D. D., cattle.			Sheep, S. D., hogs.				Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
300	10.9	22.	11.	9.6	22.	11.	12.5	21.5	18.5	28.4	20½	20.8	36.7	...	26.	1.92	2.10	1.54	2.00
310*	11.	22.	11.	9.7	22.	11.	12.6	22.	18.7	28.9	20½	21.1	37.4	...	26.	1.94	2.10	1.56	2.00
320	11.1	22.5	...	9.8	22.5	...	12.8	22.5	19.	29.4	...	21.4	38.1	...	...	1.96	....	1.57	....
330	11.2	23.	...	9.9	23.	...	12.9	23.	19.2	30.	...	21.6	38.8	...	...	1.99	....	1.59	....
340	11.3	23.5	...	9.9	23.5	...	13.1	23.5	19.4	30.5	...	21.8	39.5	...	...	2.02	....	1.60	....
350	11.4	24.	...	10.	24.	...	13.2	24.	19.6	31.1	...	22.1	40.2	...	...	2.04	....	1.63	....
360	11.5	24.	...	10.1	24.	...	13.3	24.5	19.8	31.6	...	22.3	40.9	...	...	2.06	....	1.66	....
370	11.7	24.5	...	10 2	24.5	...	13.4	25.	20.	32.2	...	22.6	41.6	...	.	2.08	....	1.67	....
380	11.8	25.	. .	10.3	25.	...	13.5	25.5	20.3	32.7	...	22.8	42.3	...	...	2.11	....	1.69	....
390	11.9	25.5	...	10.5	25.5	...	13.6	26.	20.5	33.3	...	23.1	43.	...	...	2.13	....	1.70	....
400	12.	26.	...	10.6	26.	...	13.7	26.5	20.7	33.8	...	23.3	43.8	...	...	2.16	....	1.72	....

*310 miles furthest distance in Minnesota on N. P.

First column shows rates established by the Act, second and third columns show present distance and terminal rates, respectively.

46 EXHIBIT 6.

An Act Prescribing the Maximum Rate to be Charged for the Transportation of Passengers Upon Railroads Within the State of Minnesota, Providing for the Enforcement of the Same and Penalties for the Violation Thereof.

Be it Enacted by the Legislature of the State of Minnesota:

SECTION 1. No railroad company owning, operating or using a line of railroad within, or partly within, the State of Minnesota, shall charge or collect more than two (2) cents per mile for carrying over its road on any trip wholly within the state any passenger of twelve (12) years of age or over, together with baggage not exceeding one hundred and fifty (150) pounds in weight, or more than one (1) cent per mile for any such passenger under twelve (12) years of age, together with baggage not exceeding seventy-five (75) pounds in weight.

SECTION 2. Any railroad company or any officer, agent or representative thereof, who shall violat- any provision of this act shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding five thousand (5,000) dollars, or by imprisonment in the state prison for a period not exceeding five (5) years, or by both such fine and imprisonment.

SECTION 3. This act shall take effect and be in force from and after the 1st day of May, 1907.

(Endorsed:) Bill of Complaint. Filed May 29th, 1907. Henry D. Lang, Clerk. Louise B. Trott, Deputy.

47 *Return of Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining order and Order to Show Cause on the therein-named Northern Pacific Railway Company, by handing to and leaving a true and correct copy thereof with J. M. Hannaford, Second Vice President of said Company, and by exhibiting Judge Lochren's original signature, personally at St. Paul in said District on the 31st day of May, A. D., 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

48 *Return of Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Edward T. Young, Attorney General for the State of Minnesota, by handing to and leaving a true and correct copy thereof with him and by exhibiting Judge Lochren's original signature, personally at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal.
T. J. SHEEHAN, *Deputy.*

49 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Ira B. Mills, Charles F. Staples and Wm. E. Young, by handing to and leaving a true and correct copy thereof with each of them and by exhibiting Judge Lochren's original signature, personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
Bt T. J. SHEEHAN, *Deputy.*

50 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify that I served the annexed Chancery Subpœna and Order to Show Cause on the therein named E. A. Evarts by handing to and leaving a true and correct copy thereof with him personally at Battle Lake, in said District on the 5th day of June, A. D., 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By H. A. RIDER, *Deputy.*

51 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named J. Rumsey Reeve by handing to and leaving a true and correct copy thereof

with J. Rumsey Reeve — by exhibiting Judge Lochren's original signature personally at Morris in said District on the 4th day of June, A. D., 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By FRED'K VAN DOREN, *Deputy.*

52 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Achille Michaud, Charles Michaud and Adolph E. Michaud by handing to and leaving a true and correct copy thereof with each of them and by exhibiting Judge Lochren's original signature personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

53 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on H. J. Horn, General Manager, J. G. Woodworth, Traffic Manager, J. B. Baird, General Freight Agent and A. M. McCleland, General Passenger Agent, and C. P. O'Donnell, City Ticket Agent, of the Northern Pacific Railway Company by handing to and leaving a true and correct copy thereof with each of them and by exhibiting the original signature of Judge Lochren personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

54 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Northern Pacific Railway Company, et al., by handing to and leaving a true and correct copy thereof with G. F. McNeill, City Passenger and Ticket Agent of said Company, and by exhibiting Judge Lochren's

original signature to him personally at Minneapolis in said District on the third day of June, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

55 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

The complainants having filed their verified bill of complaint in this Court against the defendants above named, praying for a temporary and permanent injunction, and in the meantime for a restraining order, and this Court having duly read and considered said bill of complaint:

Now, on motion of Edward S. Robert and How, Butler and Mitchell, solicitors for said complainants,

It is ordered, That said defendants, and each of them, show cause before this Court in this Federal Building, at Saint Paul, Minnesota, on the 12th day of June, 1907, at ten o'clock in the forenoon of that day, why a temporary injunction should not issue in accordance with the prayer in said bill of complaint contained.

That in the meantime, and until further order of the Court in the premises the said defendant, Northern Pacific Railway Company, its officers, directors, agents and employés, be and they are hereby restrained from publishing or adopting the tariffs set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and described in said complaint, or from reducing its tariffs to the figures set forth in said Act.

That in the meantime, and until the further order of the Court in the premises, said defendant, Edward T. Young, Attorney General of the State of Minnesota, is hereby restrained from
56 taking or causing to be taken, any action, step or proceeding against said Railway Company, its officers, directors, agents or employés, to enforce the penalties and remedies specified in said Act approved April 18, 1907.

That in the meantime and until the further order of the Court in the premises, the said defendants, E. A. Evarts, O. J. Whitman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, and other shippers affected by this proceeding, and each of them are hereby restrained from instituting any action for the violation of said Act approved April 18, 1907, or from demanding that

any of the rates contained therein be given to them or either of them.

Dated May 31st, 1907.

WM. LOCHREN, *Judge.*

(Endorsed:) Restraining Order. Filed May 31st, 1907. Henry D. Lang, —, By Louise B. Trott, Deputy.

(Endorsed:) Restraining Order. Filed June 11th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

57 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, C. J. Whitman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Præcipe for Chancery Subpœna.

To the clerk of the above named court:

Please issue Chancery Subpœna for each of the above named defendants, returnable at July Rules, 1907, and deliver same to the Marshal for service.

Dated May 31st, 1907.

HOW, BUTLER & MITCHELL,
Complainants' Solicitors.

(Endorsed:) Præcipe for Chancery subpœna. Ent. C. R. "C" p. 4. Filed May 31st, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

58 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

MAY 31ST.

The complainants herein having filed a Bill in Equity in this cause, on application of How, Butler & Mitchell, Solicitors for said complainants, it is hereby ordered that a Chancery Subpœna issue as therein prayed.

59 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna and Restraining Order on the therein-named O. J. Whitman by handing to and leaving a true and correct copy thereof with him personally at Elk River in said District on the 10th day of June, A. D., 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By H. A. RIDER, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Northern Pacific Railway Company by handing to and leaving a true and correct copy thereof with J. M. Hannaford, Second Vice President of said Company personally at St. Paul in said District on the 31st, day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Edward T. Young, Attorney General for the State of Minnesota by handing to and leaving a true and correct copy thereof with him personally at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

60 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Ira B. Mills, Charles F. Staples and Wm. E. Young by handing to and leaving a true and correct copy

thereof with each of them personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Achille Michaud, Charles Michaud and Adolph E. Michaud by handing to and leaving a true and correct copy thereof with each of them personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named J. Rumsey Reeve, by handing and leaving a true and correct copy thereof with J. Rumsey Reeve personally at Morris, in said District on the 4th day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By FRED VAN DOREN, *Deputy.*

61 UNITED STATES OF AMERICA,
District of Minnesota, Third Division:

The President of the United States of America to Northern Pacific Railway Company, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whitman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minneosta, on the first Monday of July next, at the city of St. Paul, then and there to answer the Bill of Complaint of Charles E. Perkins and David C. Shepard, citizens of the State of Minnesota, filed against you on the 31st day of May, A. D., 1907; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 31st day of May, 1907,

Issued at my office in the city of St. Paul, under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL.]

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

MEMORANDUM.—The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

HOW, BUTLER & MITCHELL,
EDWARD S. ROBERT,
Complainants' Solicitors.

(Endorsed:) Chancery Subpœna. Returnable July Rules 1907. Filed June 11th, 1907. Henry D. Lang, Clerk.

62 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whitman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

To Henry D. Lang, Esq., Clerk of United States Circuit Court, St. Paul, Minnesota:

Please enter my appearance for the defendant, Northern Pacific Railway Company, in the above entitled suit.

June 1, 1907.

CHARLES W. BUNN,
Attorney N. P. Ry. Co., St. Paul, Minn.

(Endorsed:) Notice of appearance of C. W. Bunn for N. P. Ry. Co. Ent. C. R. "C" p. 107. Filed June 1st, 1907. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

63 United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

JUNE 1ST.

This day comes the defendant Northern Pacific Railway Company by C. W. Bunn, Solicitor on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered.

64 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whitman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

It is ordered, That the hearing on the order to show cause heretofore made herein, why a temporary injunction should not issue in accordance with the prayer in the bill of complaint herein contained, be and the same is hereby continued to and until the 8th day of July, 1907, at ten o'clock in the forenoon of that day.

That in the meantime, until the further order of the Court in the premises, the restraining order heretofore made herein, be and the same hereby is in all things continued.

The right is reserved to Edward T. Young to make any special appearance herein for himself or for defendants Ira B. Mills, Charles F. Staples and William E. Young, and any motion herein founded thereon at any time prior to the Rule day in July 1907.

Dated St. Paul, Minn., June 7, 1907.

WM. LOCHREN, *Judge*.

(Endorsed:) Order continuing hearing. Ent. T. M. Vol. 36, p. 50. Filed June 10th, 1907. Henry D. Lang, Clerk.

65 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Appearance.

The Clerk will enter our appearance for Ira B. Mills, Charles F. Staples and William E. Young, three of the defendants in the above entitled cause.

E. T. YOUNG,
THOS. D. O'BRIEN,
C. S. JELLEY,
ROYAL A. STONE,
GEORGE T. SIMPSON,
Solicitors for Defendants.

(Endorsed:) Appearance for Ira B. Mills, Charles E. Staples, & William E. Young. Ent. C. R. C. p. 109. Henry D. Lang, Clerk.

Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RY. CO. et al.

Chancery Rule and Order Book.

JULY 1ST.

This day comes the defendants Ira B. Mills, Charles F. Staples and William E. Young, by E. T. Young, Thos. D. O'Brien, C. S. Jelley, Royal A. Stone and George T. Simpson, Solicitors on whose motion it is hereby ordered that the appearance of said defendants be and the same is hereby entered.

66 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Appearance.

The Clerk will enter my appearance for J. Rumsey Reeve one of the defendants in the above entitled cause.

WILLIAM C. BICKNELL,
Solicitor for Defendant, Morris, Minnesota.

(Endorsed:) Appearance of J. Rumsey Reeve by Wm. C. Bicknell, Morris, Minn. Ent. C. R. C. p. 109. Filed July 1st, 1907. Henry D. Lang, Clerk.

United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RY. Co. et al.

Chancery Rule and Order Book.

JULY 1ST.

This day comes the defendant J. Rumsey Reeve by William C. Bicknell Solicitor on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered.

67 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Appearance.

The Clerk will enter our appearance for the defendant O. J. Whitman in the above entitled matter.

FRANK T. WHITE,
GEO. H. TYLER,
Solicitors for Defendant O. J. Whiteman,
Elk River, Minnesota.

(Endorsed:) Appearance for defendant O. J. Whitman by Frank T. White and Geo. H. Tyler, Elk River, Minn. Ent. C. R. C. p. 109. Filed July 1st, 1907. Henry D. Lang, Clerk.

United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY Co. et al.

Chancery Rule and Order Book.

JULY 1ST.

This day comes the defendant O. J. Whiteman by Frank T. White and Geo. H. Tyler solicitors on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered.

68 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Appearance.

The Clerk will enter our special appearance for Edward T. Young, one of the defendants in the above entitled cause, the said special appearance being only for the purposes of the motion to dismiss filed by said defendant.

ROYAL A. STONE,
THOMAS D. O'BRIEN,
C. S. JELLEY,
GEORGE T. SIMPSON,
Solicitors for Defendant.

(Endorsed:) Appearance for Edward T. Young. Ent. C. R. C. p. 110. Filed July 1st, 1907. Henry D. Lang, Clerk.

United States Circuit Court, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

JULY 1.

This day comes the defendant Edward T. Young, as specified in the præcipe this day filed therefor, by Royal Stone, Thos. D. O'Brien, C. S. Jelley, & George T. Simpson, Solicitors, on whose motion it is hereby ordered that the appearance *fo* said defendant be and the same is hereby entered.

69 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Motion to Dismiss as to Edward T. Young.

Comes now the defendant, Edward T. Young, the Attorney General of the State of Minnesota, and, appearing specially and only for the purpose of this motion, and not otherwise submitting to or acknowledging the jurisdiction of this Court in the premises and expressly averring that the State of Minnesota has not and does not consent to the commencement of this action in manner and form as herein attempted or otherwise, moves this Honorable Court to dismiss as to him the bill of complaint filed in the above entitled cause, and for the ground of this motion shows:

That it appears by the said bill that the same is exhibited by the complainants against this defendant as, and only as, the Attorney General of the State of Minnesota, and that the relief sought and prayed for therein is the restraint of him, the said Edward T. Young as Attorney General aforesaid, by writ of injunction from proceeding in his official capacity, and not otherwise, and in the exercise of an executive discretion thereby vested in him, to commence the appropriate action or actions in the name of and on behalf of
70 the said State of Minnesota, thereby restraining the State of Minnesota from proceeding by appropriate action or actions to enforce certain of its laws or to test the validity of the said laws; the said suit being, therefore, in truth and effect a suit against the said State of Minnesota as a party defendant, commenced against it without its consent, contrary to the Eleventh Amendment of the Constitution of the United States.

Wherefore, this defendant separately demands the judgment of this Honorable Court that the said bill of complaint be dismissed as to him.

EDWARD T. YOUNG.

ROYAL A. STONE,
GEORGE T. SIMPSON,
C. S. JELLEY,
THOMAS D. O'BRIEN,
Solicitors for said Defendant.

(Endorsed:) Motion to dismiss as to Edward T. Young. Filed July 1st, 1907. Henry D. Lang, Clerk.

71 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Now comes Edward T. Young, one of the defendants above named, appearing specially and only in response to the Order to Show Cause why a temporary injunction should not issue as prayed for herein, and for cause why such temporary injunction should not issue as to him, shows:

That it appears by the Bill of Complaint exhibited herein that the same is exhibited by the complainants against this defendant as, and only as the Attorney General of the State of Minnesota and that the relief sought and prayed for therein is the restraint of him, the said Edward T. Young, as Attorney General aforesaid, by Writ of Injunction, from proceeding in his official capacity, and not otherwise, and in the exercise of an executive discretion thereby vested in him, to commence the appropriate action or actions in the name of and on behalf of the said State of Minnesota thereby restraining the State of Minnesota from proceeding by appropriate action or actions to enforce certain of its laws or to test the validity of the said laws; the said suit being therefore, in truth and effect, a suit against the said State of Minnesota, as a party defendant, commenced against it without its consent, contrary to the Eleventh
72 Amendment of the Constitution of the United States.

Wherefore, this defendant prays that the said order to show cause be discharged.

EDWARD T. YOUNG.

THOMAS D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for said Defendant.

(Endorsed:) Motion to dismiss Temporary Injunction as to Edward T. Young. Filed July 8th, 1907. Henry D. Lang, Clerk.

73 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Now comes the above named defendants Ira B. Mills, Charles F. Staples and William E. Young and reserving their right to make such further and other showing and proof as they may hereafter be advised is necessary and proper, pray this Honorable Court that at this time the rule and order to show cause heretofore issued to and served upon them in the above entitled cause be discharged as to these defendants, upon the grounds and for the reasons that it is manifest:

I.

That no facts are stated in the Bill of Complaint exhibited by said complainants sufficient to show that they are entitled to any relief as against these defendants, whether as prayed in said Bill or otherwise.

II.

That in said bill several distinct and separate matters are attempted to be alleged, as to several of which these defendants are in no way connected and in others of which some of the other defendants are in no way interested or connected and said several matters are so separate and distinct and the rights and interests of the defendants so different that the said matters and the said defendants cannot be properly joined in one action.

74 III.

That it manifestly appears by said bill that the same is exhibited against these defendants in their official capacity as members of and constituting the Railroad and Warehouse Commission of the State of Minnesota, and inasmuch as the relief sought against these defendants is to restrain their official action, the same is in effect and in truth a suit against the State of Minnesota and against its objection.

IV.

That it appears from said bill that these defendants' duties are and have been fully performed with reference to any proceedings by them concerning the order of the Railroad and Warehouse Commission of September 6th, 1906, attempted to be described in said bill; that the rates prescribed by said order are in full force and effect, by the voluntary act of the defendant railroad company, and constitute the only legal rates which may be charged for the trans-

portation of the merchandise described in said order between stations in the state of Minnesota, and no other or different rates can be fixed except in the manner provided by the statutes of the State of Minnesota in that behalf enacted.

V.

That it appears from said Bill of Complaint that these defendants do not contemplate or threaten to take any action or proceeding with reference to the order of September 6th, 1906, or the acts of the Legislature of the State of Minnesota referred to in said bill.

VI.

That the statutes of the State of Minnesota, defining the powers and duties of the Railroad and Warehouse Commission, provide no penalty for failure to obey the orders of said Commission and the only method of enforcing compliance with an order of said commission is by a proceeding in mandamus in the District Court
75 of Minnesota, and this Court will not make an order in restraint of such proceedings.

Wherefore these defendants pray that without any other or further showing of cause upon their part said rule and order be discharged as to them.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

EDWARD T. YOUNG,
GEORGE T. SIMPSON,
ROYAL A. STONE,
THOMAS D. O'BRIEN,
C. S. JELLEY,
Solicitors for These Defendants.

(Endorsed:) Motion to discharge Restraining Order as to Railroad & Warehouse Commission. Filed July 8th, 1907. Henry D. Lang, Clerk.

76 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Motion to Discharge Restraining Order.

Now comes the defendant, J. Rumsey Reeve, and reserving his right to make such further and other showing and proof as he may be advised is necessary and proper, prays this Honorable Court that at this time the rule and order to show cause heretofore issued to and served upon him in the above entitled cause, be discharged as to him, upon the grounds and for the reasons that it is manifest:

I.

That no facts are stated in the bill of complaint filed by said complainants, sufficient to show that they are entitled to any relief as against this defendant, whether as prayed in said bill or otherwise.

II.

That in said bill several distinct and separate matters are attempted to be alleged as to several of which this defendant is in no way connected and in others of which some of the other defendants are in no way interested or connected, and said several matters are so separate and distinct and the rights and interests of the defendants so different, that the said matters and the said defend-
77 ants cannot be joined in one action.

Wherefore, this defendant prays that without any other or further showing of cause upon his part said rule and order be discharged as to him.

J. RUMSEY REEVE,
Defendant.

WILLIAM C. BICKNELL,
Solicitor for said Defendant.

(Endorsed:) Motion to discharge restraining order as to J. Rumsey Reeve. Filed July 8th, 1907. Henry D. Lang, Clerk.

78 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD, and ADOLPH E. MICHAUD.

Motion to Discharge Restraining Order.

Now comes the defendant O. J. Whiteman and reserving his right to make such further and other showing and proof as he may be advised is necessary and proper, prays this Honorable Court that at this time the rule and order to show cause heretofore issued to and served upon him in the above entitled cause, be discharged as to him, upon the ground and for the reason that it is manifest:

I.

That no facts are stated in the bill of complaint filed by said complainants, sufficient to show that they are entitled to any relief as against this defendant, whether as prayed in said bill or otherwise.

II.

That in said bill several distinct and separate matters are attempted to be alleged as to several of which this defendant is in no way connected and in others of which some of the other defendants are in no way interested or connected, and said several matters are so separate and distinct and the rights and interests of the defendants so different, that the said matters and the said defendants cannot be joined in one action.

79 Wherefore, this defendant prays that without any other or further showing of cause upon his part said rule and order be discharged as to him.

O. J. WHITEMAN,
Defendant.

FRANK T. WHITE,
GEO. H. TYLER,
Solicitors for said Defendant.

(Endorsed:) Motion to discharge Restraining Order as to O. J. Whiteman. Filed July 8th, 1907. Henry D. Lang, Clerk.

80 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term A. D. 1907.

JULY 8TH, 1907.

Monday morning, Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

This day come the parties to this cause by their respective solicitors and the motion of the defendant Edward T. Young, for a dismissal of the bill of complaint filed in the above entitled cause as to him for the reasons therein states, now coming on to be heard, Mr. Edward T. Young appears specially for himself for the purpose solely of said motion and argues the same on his behalf and Mr. Jared How appears for and argues in opposition thereto on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon the said order motion, it is by the Court ordered that the same be and it hereby is denied.

An exception is prayed on behalf of the said defendant to the said order denying the said motion and is allowed.

This day come the parties to this cause by their respective solicitors, Mr. Jared How appearing on behalf of the complainants and Messrs. Edward T. Young, Royal A. Stone, Thomas D. O'Brien C. S. Jelley and George T. Simpson, appearing on behalf of the defendants Ira B. Mills, Charles F. Staples and William E. Young, and the motion of the aforesaid defendants for a dismissal of the order to show cause heretofore issued and served upon them and returnable at this time and place, now coming on to be heard, the same is argued by the solicitors for the respective parties

81 hereto and after hearing the arguments and statements of counsel thereon and being fully advised in the premises, after due consideration thereof it is by the Court ordered that the said motion be and the same hereby is denied.

An exception is prayed on behalf of the said defendants to the said order denying said motion and is allowed.

82 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

JULY 8TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

This day come the parties to this cause by their respective solicitors, Mr. Jared How appearing on behalf of the complainants and Messrs. Edward T. Young, Royal A. Stone, Thomas D. O'Brien, C. S. Jelley and George T. Simpson appearing on behalf of the Defendant Edward T. Young, and the order to show cause heretofore issued and returnable at this time and place why a temporary injunction should not issue as therein prayed for, now coming on to be heard the same is presented to the Court solely upon the question as to whether or not if it should be determined upon a final hearing upon this order to show cause that a temporary injunction shall issue, whether or not the same shall include the defendant Edward T. Young.

Mr. Jared How argues said order to show cause on behalf of the complainants.

Mr. Royal A. Stone argues in opposition thereto on behalf of the defendant Edward T. Young.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Royal A. Stone resumes and concludes his argument upon the said order to show cause on behalf of the defendants.

And the hearing on said order to show cause not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and

83 continued until to-morrow at 10 o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

84 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

JULY 9TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

This day come again the parties to this cause by their respective solicitors and the hearing upon the order to show cause heretofore duly issued why a temporary injunction should not issue as prayed for against the defendants and each of them which comes on at this time solely upon the question as to whether or not if it shall be considered by the Court upon a final showing upon this order to show cause that an injunction shall issue, whether or not the same shall include the defendant Edward T. Young, is resumed and continued as follows, to-wit:

Mr. Jared How, argues said order to show cause on behalf of the complainants.

Mr. Thomas D. O'Brien argues in opposition on behalf of the defendant Edward T. Young.

Mr. C. W. Bunn argues upon said order to show cause on behalf of the defendant Railway Company.

Mr. Thomas Wilson argues further upon said order to show cause on behalf of the defendant Railway Company.

Mr. Edward T. Young argues further upon said order to show cause on his own behalf.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward T. Young resumes and concludes his argument upon said order to show cause on his own behalf.

85 Mr. Jared How argues in reply and conclusion upon said Order to show cause on behalf of the complainants.

And after *the* hearing the arguments and statements of the solicitors for the respective parties hereto thereon and being fully advised in the premises, upon due consideration, it is by the Court ordered that if upon a final hearing of the order to show cause why a temporary injunction should not issue as therein prayed for it shall be determined that such injunction shall issue the same shall include the defendant Edward T. Young.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

86 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

This day come the parties to this cause by their respective solicitors, How, Butler and Mitchell, and Edward S. Robert appearing on behalf of the complainants, Mr. C. W. Bunn appearing on behalf of the defendant the Northern Pacific Railway Company, and Messrs. E. T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley and George T. Simpson appearing for the defendants Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, and the same now coming on for hearing upon the application of the complainants for a temporary injunction herein:

By consent of all parties in open court,—

It is ordered, That the hearing upon rule to show cause, issued, herein May 31st, 1907, be continued until September 3rd, 1907, at 10 o'clock A. M.

It is further ordered That in the meantime and until the further order of this Court in the premises, the restraining order issued in and made part of the order to show cause issued May 31st, 1907, and all the provisions thereof shall be and the same are hereby in all things continued in full force and effect.

It was agreed between the parties as follows:

That complainant may, if so advised, serve additional affi-
87 davits in support of the application for temporary injunction on or before the 23rd day of July, 1907.

That the defendants shall answer or demur on or before the rule day in August;

That all affidavits in opposition to complainants' affidavits shall be filed and copies served on complainants' attorneys at least ten days before the date to which said hearing is continued aforesaid.

That any defendant who shall demur shall serve upon complainants' counsel at least ten days before the date to which said hearing is continued, a copy of the answer which said defendant will file in case the demurrer is overruled.

Now it is ordered, That the foregoing stipulations be and the same are hereby approved by the Court.

Dated July 16th, 1907.

By the Court.

WM. LOCHREN, *Judge.*

(Endorsed:) Order continuing hearing on Order to Show Cause. Ent. T. M. Vol. 36, p. 163. Filed July 16th, 1907. Henry D. Lang, Clerk.

88 United States Circuit Court, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

How, Butler & Mitchell, for complainants.
C. W. Burin for N. P. Ry. Co.
Edward T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley, George T. Simpson, for Railroad and Warehouse Commission.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

How, Butler & Mitchell, for complainants.
Wm. R. Begg for G. N. Ry. Co.
Same appearances for Railroad and Warehouse Commission.
E. P. Peterson for defendants Palm & Larson.

C. Equity. No. 859.

JAMES T. WOODWARD et al.

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.

How, Butler & Mitchell for complainants.
F. W. Root for C. M. & St. P. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

C. Equity. No. 860.

CRAWFORD LIVINGSTON et al.

vs.

CHICAGO & NORTHWESTERN RAILWAY COMPANY et al.

How, Butler & Mitchell for complainants.
Samuel A. Lynde for C. & N. W. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

89 C. Equity. No. 861.

GEORGE S. BREWSTER et al.

vs.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILROAD COMPANY et al.

How, Butler & Mitchell for complainants.
Thomas Wilson for C. St. P. M. & O. Ry. Co.
Same appearances for Railroad & Warehouse Commission.

C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

How, Butler & Mitchell for complainants.
George W. Seevers for M. & St. L. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

C. Equity. No. 863.

JOHN A. HUMBIRD

vs.

CHICAGO, GREAT WESTERN RAILWAY COMPANY et al.

Stiles W. Burr, for complainant.
Asa G. Briggs for C. G. W. Ry. Co. et al.
Same appearances for Railroad and Warehouse Commission.
C. Louis Weeks for C. H. Tripp.

C. Equity. No. 864.

FREDERICK C. BARROWS

vs.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY et al.

John F. McGee, for complainant.
Alfred H. Bright for M. St. P. & S. Ste. M. Ry. Co.
Same appearances for Railroad & Warehouse Commission.

C. Equity. No. 864.

JOHN J. CARLE

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.

90 How, Butler & Mitchell for complainant.
McNeil V. Seymour, for C. R. I. & P. Ry. Co.
Same appearances for Railroad & Warehouse Commission.
C. Louis Weeks for E. B. Swygart.

This cause came on for hearing before Honorable William Lochren, United States District Judge for the District of Minnesota, at

the Federal Building, Saint Paul, Minnesota, on the eighth day of July, A. D. 1907:

The parties being present by their respective solicitors the cause is fully argued and heard.

Whereupon, the Court being duly advised in the premises, renders the following decision orally:

LOCHREN, *J.* (Orally):

The question now before the Court is as to whether or not in case temporary injunction shall issue in these cases the same should include the name of Edward T. Young as Attorney General of this State; and that presents the question as to whether or not the rates as established by legislature enactment and authority are unconstitutional and amount to the taking of the property of the railway companies without the due process of law. It is alleged in the bills of each case that the several stockholders complainants have applied to the officers of their respective railroad companies, asking them to take proceedings for the preservation of the alleged rights of the stockholders, and that the railroad companies through their officers have refused or declined to do so; therefore the stockholders having no one to represent them, and owning stock in the railroad companies, and being interested in the welfare of the companies and have been obliged to bring these suits themselves.

I apprehend there is no doubt that while a railroad company is represented by its officers, the stockholders ordinarily are not permitted to proceed by themselves to protect the rights of the
91 corporation; but where a corporation by its officers refuses to take proper action to protect its property, the stockholders themselves, as a matter of necessity, are empowered to take such action. I think this view is upheld by the many similar cases referred to by counsel in this argument. The claim of the Attorney General is that these actions seeking to enjoin him are really suits against the State; that the State is the real party attempted to be proceeded against; and the eleventh amendment to the Constitution of the United States is referred to, which forbids a suit in law or equity against a state by a citizen of another state or by a citizen or subject of a foreign state.

There is no doubt that this goes to the extent claimed of forbidding any suit of that kind from being brought in a Federal Court. There are other provisions also in the Constitution to be considered like that in the Fourteenth Amendment referred to, that no State shall interfere, deprive any person of life, liberty or property without due process of law. That is a provision which the courts must see is made effective, as well as the other. It is a provision which applies to a state. A state is now allowed to take private property without the due process of law; and it is well settled with reference to public service corporations, that where the rates of compensation, for their services are fixed by state legislatures or administrative bodies acting under the authority of State legislatures, and those rates are made so low as not to be compensatory and not allow the business to be carried on at a fairly remunerative rate, then in fact private property is

taken without due process of law; and any law to that effect, or any order of an administrative body to the same effect is unconstitutional; and a party must necessarily have some relief against wrongful acts of that kind. He must have the right to apply to the courts with the full expectation and certainty, in a proper case, of finding proper relief. Such a law or order if it does not
92 afford proper compensation for the services that are required of these corporations, does in fact become confiscatory, and is for that reason unconstitutional. It confers no authority upon any one who attempts to enforce it, and therefore courts step in by their equity powers of injunction to prevent attempts to enforce such enactment or order. If an officer of the state attempts to enforce such an enactment or order he has no protection in law for such action; he cannot be protected while acting under an unconstitutional law by the mere fact that he is an officer of the state which state has enacted or attempted to enact that same law.

It was claimed in the argument yesterday by the Assistant Attorney General that one of the purposes of that office is to test this constitutional question and to bring an action in the state court so that it may be determined whether the law is enforcible or not. Now the only action for which there is any provision that I have observed is by prosecution brought against either of the railroad companies or some of their agents or officials, in the nature of a criminal prosecution for disobedience to or failure to obey the law. It cannot be well claimed that the constitutionality of that law in a case of this kind can be decided in an action of that sort. If an action of that kind were brought in a state court, an action of a criminal nature, the defense that the law was unconstitutional or confiscatory could not be made out in that court; for could any proper remedy be granted.

The presumption would be that the rates so fixed were reasonable. There is always a presumption in cases of that sort that the rates fixed by the legislature are reasonable. The court in the trial of a criminal case brought to recover penalties or fines, or seeking im-
93 prisonment of a party indicted would have no machinery or means to determine whether these rates were reasonable or unreasonable, or whether they went to the extent of confiscation or not. It will be a very difficult question for any court to determine, mixed as these rates are, with rates fixed by the Interstate Commerce Commission respecting interstate traffic, whether they were reasonable. It would be a very complex question for any court to determine as to the effect of those local rates, whether they were confiscatory or not. That matter certainly could not be determined in a criminal action brought for an alleged violation of those laws. Therefore there can be no remedy afforded by any state court in this case on the question as to whether as claimed in these bills of complaint the law is actually confiscatory and therefore unconstitutional; and the railroad companies and stockholders, if denied a remedy in this court, would be without remedy, they would be remediless; and the provision of the Constitution which is intended

to protect persons in the ownership of property as against a state would be rendered nugatory.

Now, with respect to whether the Attorney General should be included as a party in case the Court should determine to grant an injunction. It seems to me that he must be so included, and if it should turn out that this law shall be held to be unconstitutional, it will be no protection to him. There is no other practical way to raise the question than by bringing a suit of this kind and making the Attorney General a party to it. There would be no purpose in going on with these actions if the Attorney General is left out. He is the person who it is alleged in the bills has threatened and is threatening to enforce these alleged unconstitutional rates; and if not enjoined of course he will be entirely free to proceed to enforce them. The one statute of the state which requires him in such a case to so
94 proceed is Section 395 of the Statutes of Minnesota, and by that he is required in case he shall have evidence that a railway company has committed any offense against the laws of the state, or has failed to exercise its franchises, or misused or abandoned them, to commence a prosecution against the railroad company at once. It is not a matter that is left to his discretion as to whether he shall proceed or not; the statute requires him to do so. As far as the alleged offences for violation of this act are concerned, it seems to me that the direction of the Attorney General is just as potent as if it were included in the act itself.

I think therefore that if the showing shall be such that it will appear to the court that an injunction should issue, then the Attorney General should be included in it; and that this is not within the decisions of the Supreme Court suit against the state, but against the Attorney General as an officer charged with the enforcement of these acts which are claimed to be unconstitutional.

This is as far, perhaps, as I need go at the present time.

(Endorsed:) Opinion on Motion to dismiss Order to Show Cause as to Edward T. Young, Att'y General. Filed July 16th, 1907. Henry D. Lang, Clerk.

95 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Order Allowing Amendments to Bill of Complaint.

Upon motion of How, Butler & Mitchell,

Ordered, That the complainants have leave forthwith to file the attached amendments to their Bill of Complaint, without prejudice

to the restraining order, and order to show cause heretofore issued, or to any other proceedings heretofore had. Fair copies of the amendments shall be forthwith furnished to the defendants without cost, and answers, motions, pleas or demurrers heretofore interposed may stand as answers, motions, pleas or demurrers upon the Bill as amended.

WM. LOCHREN, *Judge.*

Dated August 3rd, 1907.

96 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud.

Amendment to the Bill of Complaint.

Now come the complainants above named, and amend the Bill of Complaint heretofore filed in said cause, in the following particulars:

1. In paragraph XI. of said Bill of Complaint, strike out that part of said paragraph commencing with the words "prior to the institution of this suit", down to the end of said paragraph, and insert in lieu thereof the following:

"More than thirty days prior to the institution of this suit, and after the passage of said acts, your orators demanded of the President and managing Directors of the said Northern Pacific Railway Company, that they cease obedience to the said order of said Commission under date September 6, 1906, and that said rates prescribed in such respective acts should not be put into effect, and that said corporation, its officers and directors, institute proper suit or suits to prevent said rates from continuing or becoming effective, as the case may be, and to have said acts and said order, and each of them, declared illegal; that the said corporation, its President and directors, have positively declined and refused to comply with such demand of your orators, or any part thereof; that the reason why said President and directors so declined and refused to comply with such demand was not in any manner because they considered said proposed rates would yield a fair and just return upon the capital invested, or would not be confiscatory, but because by reason of the severity of the penalties prescribed for the violation of said acts and order they could not subject themselves and the property of the Railroad to the ruinous consequences which would inevitably result from failure on their part to obey the said laws and order, a result which no action by themselves, their stockholders or directors could possibly prevent.

Your Orators are advised and believe that the shareholders in the said Northern Pacific Railway Company are extremely numerous and widely scattered, living in this and many foreign coun-
97 tries; that it would have been impossible to procure a meeting of said shoreholders within such time as would have been necessary in order that your orators and other shareholders might have relief in the premises. This suit is not in any manner or to any extent a collusive one, to confer on the Court of the United States jurisdiction of a case of which it could not otherwise have cognizance."

2. After said paragraph XI insert the following:

"XI*a*. Your orators further allege that said Acts of April 4, 1907, and April 18, 1907, are, and each of them is, in the penalties prescribed for their violation, so draxtic, that no owner or operator of railway property can invoke the jurisdiction of any court to test the validity thereof, except at the risk of confiscation of its property, and the imprisonment for long terms in jails and penitentiaries of its officers, agents and employés, and for that reason your orators allege that said Acts of April 4 and April 18, 1907, and each of said Acts, denies to the defendant Railway Company and its stockholders, including the complainants, the equal protection of the laws and deprives it, and them, of their property without due process of law, and are, and each of said Acts is, for that reason, unconstitutional and void."

CHARLES E. PERKINS,
DAVID C. SHEPARD,
By WILLIAM D. MITCHELL,
Their Solicitor.

HOW. *H*UTLER & MITCHELL AND
EDWARD S. ROBERT,
Solicitors for Complainants.

(Endorsed:) Order and Amendments to Bill of Complaint. Ord. Ent. T. M. Vol. 36. p. 173. Filed Aug. 5th, 1907 Henry D. Lang, Clerk By Louise B. Trott, Deputy

98 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud.

Demurrer of Ira B. Mills, Charles F. Staples, and William E. Young.

Now come the above named defendants, Ira B. Mills, Charles F. Staples and William E. Young, jointly with each other but sep-

arately so far as concerns any of the other defendants named in said bill, and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:—

I.

That said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainants to any relief against these defendants.

And these defendants for special grounds of demurrer further show.

II.

That it appears by the said bill that the same is exhibited against these defendants and the several other defendants therein named, for distinct matters and causes, in several whereof, as appears by the said bill, these defendants are not in any manner interested or concerned, and that the said bill is altogether multifarious.

99

III.

That it appears by the said bill that the same is exhibited against these defendants as, and only as, members of and constituting the Railroad & Warehouse Commission of the State of Minnesota, and that the relief sought as against these defendants, is the judicial restraint of the executive action of these defendants.

IV.

That it appears by the said bill, that in so far as the same is exhibited against these defendants, it is in truth and effect exhibited against the State of Minnesota, and that this suit is in truth and effect one against the State of Minnesota, and commenced against it without its consent, and that this court therefore has no jurisdiction to entertain the same.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants do demur thereto, and humbly demand the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

E. T. YOUNG,
C. S. JELLEY,
GEORGE T. SIMPSON,
R. A. STONE,
T. D. O'BRIEN,
Solicitors for Defendants Mills, Staples and Young.

I, R. A. Stone, one of the Solicitors for the defendants Ira B. Mills, Charles F. Staples and William E. Young, in the above entitled cause, Do hereby certify that the foregoing Demurrer, in my opinion, is well founded in law.

R. A. STONE.

100 STATE OF MINNESOTA,
County of Ramsey, ss:

I, Ira B. Mills, one of the defendants in the above entitled cause, and joining in the foregoing demurrer, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

IRA B. MILLS.

Subscribed and sworn to before me this 13th day of July, A. D. 1907.

THOS. YAPP,
Notary Public, Ramsey Co., Minn.

My Commission expires May 1st, 1918.

(Endorsed:) Demurrer of Ira B. Mills Charles F. Staples and William E. Young. Filed Aug. 5th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

101 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Demurrer of the Defendant Edward T. Young.

Now comes the above named defendant, Edward T. Young, separately and by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, does demur thereto and for cause of demurrer shows:

I.

That said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainants to any relief against this defendant.

And this defendant for special grounds of demurrer further shows:

II.

That it appears by the said bill that this cause is in truth and effect a suit against the State of Minnesota commenced without its consent, and therefore in violation of the Eleventh Amendment to the Constitution of the United States.

III.

That it appears by the said bill that the same is exhibited against this defendant as, and only as, the Attorney General of the State of Minnesota, and that the relief sought as against this de-
102 fendant, is the judicial control and restraint of the executive and discretionary action of this defendant in his official capacity aforesaid, and not otherwise.

IV.

That it appears by the said bill that the same is exhibited against this defendant and the several other defendants therein named, for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant does demur thereto, and humbly demand the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

EDWARD T. YOUNG.

THOS. D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for said Defendant.

I, R. A. Stone, one of the Solicitors for the defendant Edward T. Young, in the above entitled cause, do hereby certify that the foregoing Demurrer in my opinion is well founded in law.

R. A. STONE.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Edward T. Young, one of the defendants in the above entitled cause, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

EDWARD T. YOUNG.

103 Subscribed and sworn to before me this 16th day of July A. D. 1907.

C. LOUIS WEEKS,
Notary Public, Hennepin Co., Minn.

My Commission expires May 17th, 1912.

(Endorsed:) Demurrer of Edward T. Young. Filed Aug. 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

104 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Demurrer of J. Rumsey Reeve.

Now comes J. Rumsey Reeve, one of the above named defendants, separately and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, does demur thereto, and for cause of demurrer shows:

I.

That said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainants to any relief against this defendant.

And this defendant for special grounds for demurrer further shows:

II.

That it appears by the said bill that the same is exhibited against this defendant, and the several other defendants therein named, for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious.

J. RUMSEY REEVE, *Defendant.*

WM. C. BICKNELL,
Solicitor for Defendant J. Rumsey Reeve.

105 I, Wm. C. Bicknell, Solicitor for Defendant J. Rumsey Reeve in the above entitled cause, do hereby certify that the foregoing demurrer, in my opinion, is well founded in law.

WM. C. BICKNELL, *Solicitor.*

STATE OF MINNESOTA,
County of Stevens, ss:

I, J. Rumsey Reeve, one of the defendants in the above entitled cause, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

J. RUMSEY REEVE.

Subscribed and sworn to before me this 2nd day of August, A. D. 1907.

W. J. STEWART,
Notary Public, Stevens Co., Minn.

My Commission expires June 25, 1909.

(Endorsed:) Demurrer of J. Rumsey Reeve. Filed Aug. 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

106 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Demurrer of O. J. Whiteman.

Now comes O. J. Whiteman, one of the above named defendants, separately and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, does demur thereto, and for cause of demurrer shows:

I.

That said bill herein filed does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainants to any relief against this defendant. And this defendant for special grounds of demurrer further shows:

II.

That it appears by the said bill that the same is exhibited against this defendant, and the several other defendants therein named, for distinct matters and causes, in several whereof as appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious.

107 O. J. WHITEMAN, *Defendant.*

GEO. H. TYLER &
FRANK T. WHITE,
Solicitors for Defendant O. J. Whiteman.

I, Geo. H. Tyler, Solicitor for defendant O. J. Whiteman in the above entitled cause, do hereby certify that the foregoing Demurrer, in my opinion, is well founded in law.

GEO. H. TYLER, *Solicitor.*

STATE OF MINNESOTA,
County of Sherburne, ss:

I, O. J. Whiteman, one of the defendants in the above entitled cause, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

O. J. WHITEMAN.

Subscribed and sworn to before me this 2nd day of August, A. D. 1907.

[SEAL.] CHAS. W. CATER,
Notary Public, Sherburne Co., Minn.

My Commission expires Jan. 1, 1913.

(Endorsed:) Demurrer of O. J. Whiteman. Filed Aug. 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

108 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

It is hereby stipulated that the demurrers to the Bill of Complaint heretofore interposed herein shall be brought on for argument before the above entitled Court on the 3rd day of September, 1907, in the same manner and to the same effect as if the same had been duly set down for argument according to the usual course of procedure.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.
GEORGE T. SIMPSON,
Solicitor for Demurrants.

(Endorsed:) Stipulation. Filed Aug. 30th, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

109 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD, and ADOLPH MICHAUD.

Answer.

The joint and several answer of the defendants Ira B. Mills, Charles F. Staples and William E. Young to the bill of complaint of the complainants above named, respectfully shows:

These defendants now and at all times hereafter, saving and reserving unto themselves and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, say:

I.

They admit the residence of the complainants as alleged in the complaint. That the defendant, the Northern Pacific Railway Company is a corporation organized under the laws of the State of Wisconsin. That the defendant Edward T. Young is a citizen of the State of Minnesota and is the Attorney General of said State. That these defendants are the members of and constitute the Railroad & Warehouse Commission of the State of Minnesota, and are residents of said State, and that the defendants Evert, Whiteman, Reeves and Michauds are residents of the State of Minnesota.

110 They admit that the defendant Railway Company is operating lines of railway as a common carrier of passengers and freight in and through the States mentioned in the bill of complaint herein.

II.

These defendants admit that the lines of railway operated by the defendant Railway Company are operated as one entire system and upon information and belief admit that the stock and bonds of said Company outstanding represent said whole system; they admit that a large part of the business of said defendant Railway Company is the transportation of interstate commerce, but these defendants deny that there is any necessary confusion or intermingling of the business transacted by said Railway Company, which is wholly local to each of the States in which it operates, with that which is inter-

state commerce, and allege that the amount and character of each, and the cost and productiveness of each, are entirely capable of being segregated and ascertained, and that the same have been so segregated and ascertained as a matter of common practice amongst railroads for many years past.

III.

They believe and admit that the greater portion of defendant Railway Company's lines have been judiciously located, but defendants have been informed and believe that certain of said lines have not been, and therefore they deny, and believe the denial to be true, that all of said defendants' said lines have been judiciously located, and as to what portions and how much of said defendants' said lines have been judiciously located these defendants require proof, if the same be necessary.

IV.

They are informed and believe it to be true, that the par value of the stock and bonds outstanding on account of said defendant Railway Company's said lines is greatly in excess of the actual original cost of constructing and equipping the same, and much
111 greater than the cost of reproducing the said lines and equipment would be, and much greater than the present value of the same, and that the original cost per mile of constructing and equipping that portion of said Company's lines within the State of Minnesota, is much less than the cost per mile as to the part of said lines which are without the State of Minnesota. That these defendants are unable to state the exact value of the said Company's property, either as to its whole line or as to that portion within the State of Minnesota, and ask that the complainants be required to present proof thereof.

V.

Further answering these defendants aver that prior to the 6th day of September, 1906, in their official capacity as aforesaid, they made an exhaustive investigation of the so-called merchandise rates charged by the defendant, the Northern Pacific Railway Company, and other railroads in the State of Minnesota, for the transportation between points in Minnesota, of the merchandise of the kind, quality and class described in Exhibit 1 attached to the complainant's bill of complaint. Pursuant to the statute in such case made and provided, they conducted hearings in the court of said investigation, due notice of the same having been given to the railway companies interested. That the defendant, the Northern Pacific Railway Company, duly appeared, answered and took part in said proceeding, and the Railroad & Warehouse Commission of the State of Minnesota then and there had full jurisdiction and authority, both of the subject matter of said investigation and of said defendant Northern Pacific Railway Company, for the purpose of conducting said hearing, receiving and considering the evidence adduced thereat, and fixing reasonable, just and equal rates for the transportation between

stations in the State of Minnesota by common carriers, of merchandise of the kind and class described in Exhibit 1; and these defendants as members of and constituting said Commission, duly
112 heard and gave due consideration to the voluminous and comprehensive evidence, much of which was submitted by and on behalf of said defendant Northern Pacific Railway Company, and as a result of said investigation and their consideration of the evidence adduced therein, defendant constituting the Railroad & Warehouse Commission as aforesaid, on the 6th day of September 1906, made the Order referred to and complained of in said bill of complaint, and in and by said Order fixed the schedule of rates in said Bill of complaint referred to and complained of, and set forth in and by said Exhibit 1, which said Exhibit 1 is hereby admitted to be a true and correct copy of the Order made on said day, and schedule referred to in said Order of September 6th, 1906.

VI.

That defendants, in pursuance of their official duties in the premises, made said order by reason of the fact that by the evidence adduced at said hearings, and by other competent and sufficient information, they were informed and convinced, and they now believe and allege, that the rates theretofore charged by said defendant Railway Company for the transportation of said commodities between stations in Minnesota, were on said Sept. 6th, 1906, and theretofore, unequal, unjust, unreasonable and excessive, exacting from the public an unreasonable large sum for the services rendered and yielding to said Railway Company an unreasonably high return, in that said rates, together with said defendant company's other receipts from traffic local to Minnesota, produced a sum considerably more than sufficient to pay the cost of handling said traffic together with a fair return on the value of the property devoted to the same.

VII.

That defendants, acting solely as the Railroad & Warehouse Commission of the State of Minnesota, were further induced to make the said Order by reason of the fact that after considering
113 the evidence adduced at the said hearings, and other competent and sufficient information, they were informed and convinced, and now allege believing it to be true, that the rates so fixed by them in their said Order of Sept. 6th, 1906, and the accompanying schedule, upon the merchandise and articles therein named, for the transportation of the same between points in the State of Minnesota, were then, and are now, in every respect, equal, just and reasonable as to the said defendant Railway Company, and the complainants herein as stockholders of said defendant Railway Company, and of the other stockholders of said Company; the defendants now aver that the said rates yield to said defendant Railway Company a fair return upon the present value of its property, including both its line and equipment used by it in said traffic between points in the State of Minnesota, as such value is, or may be ascer-

tained, having due regard for the original cost of construction of said lines and other property, the amount expended in permanent improvements thereon, the amount and market value of said company's stocks and bonds, and the present as compared with the original cost of construction, the probable earning capacity of the property under said rates, and the sum required to meet the necessary and lawful operating expenses of said company, together with all other elements effecting the value of said property, which are proper to be considered.

VIII.

Further answering these defendants respectfully aver and submit, that the Orders of Sept. 6th, 1906, and May 3rd, 1907, and the said Act of April 18th, 1907, relate to and effect the carriage of freight exclusively within the State of Minnesota and between points therein, and that they do not purport to, nor do they in any manner, affect or burden interstate commerce, and these defendants deny that the existence or maintenance of the rates provided in said orders and Act can in any manner affect, change or lower any other rate
114 or rates maintained by said defendant Railway Company, which are just, and reasonable, nor can the same constitute discrimination as to any other rate, if such rate is just and reasonable in itself; nor affect, nor constitute discrimination as to any interstate rate maintained by defendant Railway Company whether the latter is reasonable or otherwise.

IX.

These defendants admit that if the said Orders of Sept. 6th, 1906 and May 3rd, 1907, did not permit rates, or if either of the Acts of the Legislature set forth and complained of in said bill of complaint, did not in and of itself permit rates which would yield to defendant, Northern Pacific Railway Company, a return sufficient to pay the cost of the service required in transacting the business to which said rates are applicable, together with a fair return upon the value of the property devoted by said Company to said traffic, and the convenience and use of the public therein, the result of enforcing any such order or law and thereby compelling the defendant Railway Company to accept insufficient compensation for the service rendered, would be, as complain-ts allege, a confiscation of its property, a taking thereof without due process of law, and a denial as to said company and its stockholders of the equal protection of the law, and violative of the Constitution of the United States and especially the Fourteenth Amendment thereof.

Further answering these defendants allege, that the rates provided in and by said Order of Sept. 6th, 1906, are equal and just, and are more than adequate for the service performed; and that after ample and full consideration of said rates by the defendant Railway Company, its officers, agents and directors, and as these defendants believe, by the complainants, the said rates were duly accepted, adopted and promulgated by said defendant Railway Company and went into full force and effect on or about the 15th day of November 1906,

and have ever since been maintained and used by said company as its regular and duly published rates for the transportation
115 of the merchandise described in Exhibit 1, between stations in the State of Minnesota, and no objection or protest was made against the same by the defendant Railway Company, these complainants, or any other person, until the passage of the Acts of the Legislature mentioned in said bill of complaint and hereinafter referred to.

X.

That no application for permission to change or raise said rates has been made to the Railroad & Warehouse Commission of the State of Minnesota by the defendant Railway Company, or the complainants, or any other persons, since the same went into effect on November 15th, 1906.

XI.

These defendants admit that on the 3rd day of May 1907, they duly made the Order referred to and described in said bill of complaint and attached thereto as Exhibit 2 thereof.

That as it appears from said Order (Exhibit 2), the same is an extension of the terminal rates provided for in the Order of September 6th (Exhibit 1) to certain stations in the State of Minnesota; that the same considerations and conditions which entered into and controlled the validity of said Order of Sept. 6th, 1906, enter into and control said Order of May 3rd (Exhibit 2), except that the effect of said Order upon the revenues of said defendant Railway Company is comparatively much less than is the Order of Sept. 6th, 1906. All of the allegations hereinbefore contained with reference to the Order of September 6th (Exhibit 1) are applicable to and are hereby repeated as to said Order of May 3rd (Exhibit 2).

XII.

These defendants further aver, that, as provided by the statutes of the State of Minnesota, the defendant Railway Company had the right to appeal to the District Court of the State of Minnesota from the orders of the Commission so entered on Sept. 6th, 1906
116 and May 3rd, 1907, within thirty days after the making thereof; that said District Court is a court of record and general jurisdiction, duly organized and existing under the Constitution and Laws of the State of Minnesota, and having and exercising all the powers of a Court of chancery and a court of common law, as the same are known and recognized under our system of jurisprudence; and said Court is fully authorized and empowered to entertain and consider actions and defenses, both legal and equitable. That had such appeal been taken, the equality, justness and reasonableness of the rates heretofore maintained by said defendant company, as well as those fixed by the Order of the Commission in said Orders of Sept. 6th, 1906 and of May 3rd, 1907, would have been for trial before said Court de novo, and upon such trial the order and findings of said Commission would have been only prima facie correct; that in said proceeding and upon said appeal all of the rights of

said complainants would have been protected and every objection to the Orders of said Commission, and every consideration which might be urged in opposition thereto, which may, can, or might be urged in this action, could and would have been considered by said District Court on said appeal. That as these defendants are informed and believe, no demand was ever made by said complainants, or either of them, upon said defendant Railway Company, its officers, agents or directors, to appeal from the Orders of said Commission made and entered on Sept. 6th, 1906 and the 3rd day of May, 1907, or to take any step in relation thereto, to test the validity thereof, as provided by the laws of the State of Minnesota in that behalf enacted.

XIII.

These defendants admit that if no appeal had been taken from the Orders of said Commission, and if the defendant Railway Company had not itself adopted and published the Orders of said Commission hereinbefore referred to, nor have filed with said Commission its schedules of the rates and charges required by said Orders
117 of said Commission, these defendants as such Commission, would have, except for the Order of this Court issued in this action, proceeded, upon the expiration of said time for appeal, to publish, and promulgate said Orders, as provided by the statutes of the State of Minnesota, and thereafter had the defendant Railway Company still refused to comply with said Orders, these defendants as such Commissioners would have demanded of the Attorney General of the State of Minnesota, that he commence an action by mandamus in said District Court, in the name of the State of Minnesota and upon the relation of these defendants, to the end that the judgment of said Court might be obtained directing and commanding the defendant Railway Company to comply with the terms and provisions of said Orders; that no other or different proceedings were ever contemplated, intended or threatened by these defendants, or so far as these defendants know, by any other person. That as these defendants are advised, the proceeding above described is the only proceeding which these defendants could take for the purpose of enforcing the Orders of the Commission dated Sept. 6th, 1906 and May 3rd, 1907, hereinbefore referred to, and that until the rendition of final judgment in said proceedings by mandamus, the defendant Railway Company, its officers, servants and agents, are subject to no fine or penalty, through, by or on account of said Orders whatever; nor is said Company in any manner subject to harrassing litigation of any kind or to a multiplicity of suits by reason thereof.

XIV.

That in the proceeding by mandamus hereinbefore described as contemplated by these defendants, the Orders of the Commission would be only prima facie correct, and the defendant Railway Company would have full and adequate means and opportunity to defend against the same, and to urge in such defense every consideration of law and equity, and every fact which the complainants might or

could present to this Honorable Court on the trial of this action upon its merits. That said defendants are, as they are advised,
118 confined to said proceedings by the statutes of the State of Minnesota, and that any other person attempting to bring an action to compel the defendant Railway Company to comply with said Orders is confined to a like proceeding, and that it is not true that unless this Court entertains this action and enjoins these defendants as prayed in the bill of complaint herein, that the complainants or said Defendant Railway Company will be compelled to defend their rights in a multitude of actions and proceedings, or that they or it will be in any manner deprived of any defense, or even hampered in maintaining each and every defense which it may have to the Orders of the Commission entered Sept. 6th, 1906 and May 3rd, 1907 hereinbefore specified.

XV.

Further answering these defendants admit that on or about the 4th day of April 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled "An Act prescribing the maximum rate to be charged for the transportation of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof" and that a copy of said Act is attached to said bill of complaint marked Exhibit 6; and these defendants further admit that on or about the 18th day of April 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad & Warehouse Commission," a copy of which is attached to said bill of complaint marked Exhibit 4.

XVI.

These defendants aver that as provided by the statutes of the State of Minnesota, they have not, nor have either of them, any duty, official or otherwise, as members of the Railroad & Warehouse Commission, or otherwise, in connection with the maintenance or enforcement of said Acts of the Legislature, and they deny
119 that they, or either of them, as members of said Railroad & Warehouse Commission, or otherwise, have contemplated or intended or threatened to bring any action or proceeding, or take any steps whatever, looking to the enforcement of the provisions of said Acts of the Legislature, and they aver that no application has ever been made to them, or either of them, by the complainants or by said defendant Railway Company, its officers or agents, requesting the exercise by them of their right to modify or change any of the rates or charges provided for by said acts of the Legislature.

XVII.

Further answering these defendants, aver that for many years last past the rates charged by the defendant Railway Company for the transportation of passengers within the State of Minnesota, have

been unequal, unjust and exorbitant, and that the rates and charges fixed and specified in said Act of the Legislature of April 4th, 1907, for the transportation of passengers within the State of Minnesota, are equal, just and reasonable, and if enforced the same will afford to the defendant Railway Company and its stockholders, an ample revenue to pay the necessary cost and expense of conducting said business, together with the proportion of the fixed charges of said defendant Railway Company properly chargeable to said passenger service, and such proper proportion of all of the other legitimate and proper expenses of said defendant Railway Company chargeable thereto, and to yield to said Company and its stockholders, a fair and adequate return upon the value of the property invested in said business. And these defendants respectfully aver that the said Act of April 4th, 1907, relates to and affects the transportation of passengers exclusively within the State of Minnesota and between points therein, and that it does not proport to, nor does it in any manner, affect or burden interstate commerce, and these defendants deny that the existence or maintenance of the rates provided
120 in said Act can in any manner affect, change, or lower any other rate or rates maintained by said defendant Railway Company, which is, or are, just and reasonable; nor can the same constitute discrimination as to any other rate or rates, if such other rate or rates is or are just and reasonable in itself; nor effect, nor constitute discrimination as to any interstate rate maintained by the defendant Railway Company, whether the latter is reasonable or otherwise.

XVIII.

That prior to the 18th day of April 1907, the rates and charges made by the defendant Railway Company for the transportation between stations within the State of Minnesota, of the commodities named in said Act of April 18th, 1907, were unjust, unequal and extortionate, and were much higher proportionately than the charges made by said Railway Company for the transportation of other freight upon its lines within the State of Minnesota and elsewhere; That the rates and charges fixed and provided by said Act of the Legislature of April 18th, 1907, are just, equal and reasonable as applied to said defendant Railway Company and its stockholders and in truth and in fact are proportionately still higher than the rates and charges fixed by said Railway Company for like services in the transportation of other freight in the State of Minnesota and elsewhere, and that the rates and charges so fixed by said Act of the Legislature are sufficient to give to said defendant Railway Company and its stockholders, a revenue 'proportionately sufficient with its other revenues, to permit it to meet its operating expenses fixed charges and all other proper and necessary expenses in connection with the operation of said Railway Company, and in addition thereto, a fair and adequate return upon the value of the property invested in the business of said Railway Company.

XLX.

Further answering these defendants aver, upon information and belief, that no sufficient demand was ever made by the com-
121 plainants upon the defendant Railway Company, its officers or directors requesting the institution of any legal proceedings in the name of the defendant Company, to test the reasonableness or validity of either of the Orders of the Railroad & Warehouse Commission or the Acts of the Legislature mentioned in said Bill of Complaint, and they aver upon information and belief, that this suit is wholly collusive, and is brought, not only for the purpose of ascertaining in a speedy and orderly manner the sufficiency of the rates and charges specified in said Orders and Laws, but for the purpose of hindering delaying and obstructing the public officers of the State of Minnesota, charged with duties in connection therewith, in the performance of such duties.

XX.

Defendants on their information and belief, deny that the expense of performing the service of transportation of local traffic between stations in the State of Minnesota is as great as the cost of handling and transporting such traffic in several other states through which said defendant's lines of railway run. Defendants further deny that the rates for intra-state business per mile of haul should be in all cases greater than the rates per mile upon interstate business, and allege that if such comparison is to be made in any case resort must be had to all the facts and circumstances surrounding the traffic in question.

Defendants admit that the defendant Railway Company's operating and other expenses have increased to some extent, as alleged in the bill of complaint, but on information and belief deny that the said expenses have increased to the extent therein alleged, and on this behalf defendants aver that said company's operating expenses, both as to traffic local to the State of Minnesota, and its interstate traffic, and traffic in other states, for many years have been and now are, largely and unlawfully increased by unjustifiable and unauthorized expenditures of the funds of said Company for purposes not authorized by the law or the charter of defendant Railway
122 Company, the exact amount or precise nature of such unauthorized expenditures being now unknown to the defendants.

XXI.

Further answering these defendants aver that the defendant Company's lines of railroad in the State of Minnesota are situated in a thriving and rapidly growing section of the State, and the volume of traffic upon said railway, particularly its passenger traffic, and in the commodities referred to in the Orders of said Commission of Sept. 6th, 1906 and May 3rd, 1907, and the Act of the Legislature of April 18th, 1907, will be necessarily greatly increased in the near future; that said freight commodities are of a class and character which enable them to be transported at a very slight cost, as com-

pared with other classes of freight, but notwithstanding that, these defendants charge the fact to be that under the tariffs and charges heretofore maintained by the defendant Company, the freights named in said Orders and said Act of the Legislature were compelled to yield an unequal and unfair proportion of the entire earnings of said company from the operation of its lines of road local to the State of Minnesota.

XXII.

These answering defendants admit that complainants' Exhibits numbered 3 and 5, are substantially true and correct statements of the matters and things therein set forth and referred to, but allege on information and belief that the same are not in all respects true and in accordance with the facts, and that so far as the same may be material these defendants pray that complainants be required to make proof thereof.

XXIII.

Further answering these defendants deny that the jurisdiction of this Court ought to have been, or can be invoked, in this cause, and they further deny that said complainants are entitled to the
123 relief, or any part thereof, that their said bill of complaint demandeth.

These defendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said bill of complaint, not admitting, however, that there is any other matter or thing in said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, true to the knowledge or belief of these defendants, or either of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

E. T. YOUNG,
ROYAL A. STONE,
T. D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
Solicitors for Defendants.

(Endorsed:) Answer of Ira B. Mills, Charles F. Staples, & William E. Young. Filed Sept. 3rd, 1907. Henry D. Lang, Clerk, Louise B. Trott, Deputy.

124 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 3RD, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, Charles F. Staples, Ira B. Mills, William E. Young, E. A. Evarts, Achille Michaud, O. J. Whiteman, J. Rumsey Reeve, Charles Michaud, and Adolph Michaud.

C. Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Barson, Tom Gunness, and S. S. Glarum.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, EDWARD T. YOUNG, Ira B. Mills, Charles F. Staples, and William E. Young.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness & S. S. Glarum.

This day come the parties to the above entitled causes by their respective solicitors, Messrs. Jared How, Pierce Butler, Edward S. Robert, Robert Thorne, Stiles W. Burr, John F. McGee, ap-
125 pearing on behalf of the complainants and Messrs. Edward T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley and George T. Simpson, appearing on behalf of the defendants,

Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young and C. W. Bunn appearing on behalf of the defendant Northern Pacific Railway Company, William R. Begg, appearing on behalf of the defendant Great Northern Railway Company, F. W. Root, appearing on behalf of the defendant Chicago, Milwaukee & St. Paul, Railway Company, Samuel A. Lynde, appearing on behalf of the defendant Chicago and Northwestern Railway Company, Thomas Wilson, appearing on behalf of the defendant, Chicago, St. Paul, Minneapolis & Omaha Railway Company, George W. Seever appearing on behalf of the defendant Minneapolis & St. Louis Railway Company, A. G. Briggs, appearing on behalf of the defendants Chicago Great Western Railway Company, A. B. & S. Stickney, Ansel Oppenheim, L. S. Cass, Wm. E. Pickney, L. P. Elmer F. Weyerhaeuser, J. W. Lusk, R. C. Wright and H. Fletcher, and Alfred E. Boyesen appearing on behalf of the defendant Northwestern Fuel Company, Alfred H. Bright appearing on behalf of the defendant Minneapolis, St. Paul & Sault Ste. Marie Railway Company McNeil V. Seymour appearing on behalf of the defendant Chicago, Rock Island and Pacific Railway Company, and the same coming now on for hearing upon the orders to show cause heretofore issued in each of said causes, on the 29th and 31st day of May A. D. 1907, returnable on the 8th day of July A. D. 1907, and an order to show cause issued on the 19th day of August A. D. 1907, returnable on the 3rd day of September A. D. 1907, and which said orders to show cause were on the 8th day of July A. D. 1907, and thereafter postponed and continued for hearing from time to time to this time and place, and now coming on to be heard, upon the agreement and consent of the solicitors for the respective parties to the above entitled causes, it is by the Court ordered that the affidavits heretofore filed on behalf of the respective parties thereto may be used in each of said causes so far as the same are applicable thereto and that the arguments to be made by the respective solicitors hereto may
126 be considered as applying to al-, of said causes so far as the same are applicable thereto and to the individual causes represented by said solicitors so far as directed thereto.

Mr. Jared How thereupon opens, states and argues said causes to the Court upon the said orders to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Stiles W. Burr argues further upon the orders to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler argues further upon the application for a temporary injunction and orders to show cause on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

127 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 4TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to the causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf
128 of the complainants.

And the trial of said cause not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

129 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 5TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day came again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Robert Thorne argues upon the order to show cause and application for a temporary injunction on behalf of the complainants.

130 And the hearing of said causes not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

131 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 6TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 875.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Robert Thorne resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. John McGee argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

132 Mr. John F. McGee resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

133 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 9TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and applica-

tion for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. John F. McGee resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants:

Mr. Stiles W. Burr argues further upon the order to show cause and application for a temporary injunction, on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The court resumes proceedings at two o'clock P. M.

134 Mr. Edward S. Robert argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Jared How argues further upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the hearing of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest.

HENRY D. LANG, *Clerk.*

135 Circuit Court of the United States, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Order Allowing Amendment to Bill of Complaint.

Upon motion of How, Butler and Mitchell and Edward S. Robert,

Ordered that the complainants have leave forthwith to file the attached amepdments to their Bill of Complaint, without prejudice to the restraining order and order to show cause heretofore issued, or to any other proceedings heretofore had. Fair copies of the amendments shall be forthwith furnished to the defendants without cost, and answers, motions, pleas or demurrers heretofore interposed

may stand as answers, motions, pleas or demurrers upon the Bill as amended.

Dated September 10th, 1907.

WM. LOCHREN, *Judge.*

136 Circuit Court of the United States, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud.

Amendment to Bill of Complaint.

Now come the complainants above named, and amend the Bill of Complaint heretofore filed in said cause in the following particulars:

In Subdivision X by striking out the following paragraph reading as follows, to-wit:

"While the immediate effect of said Orders and of said Act, approved April 18, 1907, if it could be confined to the State of Minnesota, might not be to take the property of said Railway Company without due process of law, yet if the principle upon which the tariffs are made, as above described, should be applied to the long haul interstate business of said company, and if the percentages of reduction effected by the said Orders and said Act should be applied to said company's local business in other states (which is now being transacted upon rates fair and equal by comparison with said company's Minnesota rates prior to said Orders and said Act), they would operate to confiscate the railroad of said company, and to deprive it of property without due process of law, in violation of the Constitution of the United States, because such measure of reduction would leave said company without any net earnings whatever from its property."

And further by inserting in lieu thereof the following paragraph:

Your orators also show and allege that the said orders of September 6, 1906, and May 3, 1907, and the said act of April 18, 1907, and the reduction of the tariffs and charges of the said Railway Company therein and thereby prescribed upon the merchandise and commodities specified therein respectively are each and all of them unjust, unreasonable and confiscatory, and they, and each and all of them would and will, if enforced, deprive your orators and the said Railway Company of their property without due process of law, and deprive them and it of the equal protection of the law, contrary to

and in violation of the Constitution of the United States and
137 the amendments thereof.

CHARLES E. PERKINS AND
DAVID C. SHEPARD,
By HOW, BUTLER & MITCHELL AND
EDWARD S. ROBERT,
Their Solicitors.

HOW, BUTLER & MITCHELL AND
EDWARD S. ROBERT,
Solicitors for Complainants.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Pierce Butler, on oath says that I am one of the solicitors for the complainants in the above entitled Bill; that I have read the said Bill and know the contents thereof; that the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

PIERCE BUTLER.

Subscribed and sworn to before me this 10th day of September, 1907.

[SEAL.] HENRY D. LANG,
Notary Public, Ramsey Co., Minnesota.

My Commission expires April 24, 1913.

(Endorsed:) Order allowing Amendment to Bill of Complaint. Ent. T. M. Vol. 36, p. 239. Filed Sept. 10th, 1907. Henry D. Lang, Clerk.

138 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 10TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Jared How, argues further upon order to show cause and application for a temporary injunction on behalf of the complainants.

Stiles W. Burr, Esq., argues further upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

139 Mr. Stiles W. Burr, resumes and concludes his argument upon said order to show cause and application for a temporary injunction in behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

140 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 11TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien opens, states and argues upon said order to show cause and application for a temporary injunction on behalf

of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon said
141 order to show cause and application for a temporary injunction on behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour od adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

A true Record.
Attest: HENRY D. LANG, *Clerk.*

142 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 12TH, 1907.

Thursday morning.—Court opened pursuant to adojurnment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon said
143 order to show cause and application for a temporary injunction on behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

144 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes Term of June, A. D. 1907.

SEPT. 13TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and appli-

cation for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on
145 behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at ten o'clock.

Ordered: That this Court do now adjourn until next Monday morning at ten o'clock.

A true record,
Attest: HENRY D. LANG, *Clerk.*

146 United States Circuit Court for the District of Minnesota.
Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 16TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

VS.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

VS.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER

VS.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

VS.

GREAT NORTHERN RAILWAY COMPANY et al.

This day came again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and appli-

cation for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes and concludes his argument upon the order to show cause and application for a temporary injunction therein on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

Mr. F. H. Peterson argues upon the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

147 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 16TH, 1907.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. F. H. Peterson resumes and concludes his argument on the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

Mr. Royal A. Stone argues upon said order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

On Motion of Mr. Royal A. Stone — is by the Court ordered that the appearance of Mr. F. H. Peterson as an additional solicitor on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, be and the same hereby is entered of record.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

148 Circuit Court of the United States, District of Minnesota. Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY CO., EDWARD T. YOUNG, IRA B. MILLS, et al.

Appearance.

The Clerk will enter my appearance for the defendants Ira B. Mills, Charles F. Staples, William E. Young and Edward T. Young, St. Paul, Minnesota, Sept. 16th, 1907.

F. H. PETERSON,
Solicitor for Ira B. Mills, Charles F. Staples, William E. Young & Edward T. Young.

(Endorsed:) Appearance of F. H. Peterson, for defendants Ira B. Mills, et al. Ent. C. R. C. p. 117. Filed Sept. 16th, 1907. Henry D. Lang, Clerk.

149 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Chancery Rule and Order Book.

SEPT. 16, 1907.

This day come the defendants Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young by F. H. Peterson one of their solicitors on whose motion it is hereby ordered that the appearance of said defendant- be and the same is hereby entered, and that the appearance of said F. H. Peterson as additional solicitor for said defendants be and the same hereby, is entered.

150 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 17TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Royal A. Stone resmues and continues his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Royal A. Stone resumes and concludes his argument on the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

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And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest: HENRY D. LANG, *Clerk.*

152 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

Sept. 18th, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Edward T. Young argues upon the order to show cause and application for a temporary injunction on behalf of himself and the defendants Ira B. Mills, Charles F. Staples and William E. Young.

Mr. Thomas Wilson argues upon the said order to show cause and application for a temporary injunction on behalf of the defendant, The Chicago, St. Paul, Minneapolis & Omaha Railway Company.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Robert Thorne argues in reply upon the said order to show cause and application for a temporary injunction on behalf of the complainants.

153 And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, Clerk.

154 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

Sept. 17th, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. John F. McGree argues in reply upon the order to show cause

and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward S. Roberts argues in reply upon the said order to Show cause and application for a temporary injunction on behalf of the complainants.

155 Mr. Pierce Butler argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest: HENRY D. LANG, *Clerk*.

156 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1907.

SEPT. 20TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day comes again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and applica-

tion for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Stiles W. Burr argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Jared How argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

157 Mr. T. D. O'Brien argues upon the order to show cause and application for a temporary injunction on behalf of the defendants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

And now having heard the arguments and statements of the solicitors for the respective parties to the above entitled cause upon the said order to show cause and application for a temporary injunction, and being fully advised in the premises, upon due consideration thereof, the Court renders an oral decision, directing that the same be transcribed and filed and that the solicitors for the respective parties hereto prepare orders in accordance therewith to be signed filed and entered.

Ordered: That the Court do now adjourn until Monday morning next at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

158 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 23RD, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come the parties to these causes by their respective solicitors, and in accordance with the decision heretofore rendered and entered herein, it is by the Court ordered, that the demurrers of the defendants, and each of them, in the above entitled causes be and the same hereby are overruled, and that the said defendants in said causes, and each of them, other than the defendants Ira B. Mills, Charles F. Staples and William E. Young, have until the rule day in November within which to file their answer to the bills of complaint in said causes and each of them.

* * * * * * *

159 Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

160 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Upon motion by counsel for complainants and upon reading affidavits in support thereof and in oppositon thereto, and after hearing counsel for complainants and for defendants.

This Court doth order that the defendant Northern Pacific Railway Company, its officers, directors, agents, servants and employés, and each of them be restrained and enjoined pending the final hearing of this cause, and until the further order of this Court in the premises, from publishing, adopting, or putting into effect the tariffs, rates or charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota and Defining Certain Duties of the Railroad and Warehouse Commission," or any thereof.

That the defendant Edward T. Young, as Attorney General of said State of Minnesota be restrained and enjoined, pending the final hearing of this cause, and until the further order of this Court in the premises, from taking or instituting any action, suit, step or proceeding to enforce the penalties and remedies specified in said Act or either thereof, or to compel obedience to said Act or compliance therewith, or any part thereof:

That the defendants E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, and each of them, and all other persons, and each of them,
161 from and after the time that they shall have knowledge of this Order, be restrained and enjoined pending the final hearing of this cause, and until the further order of this Court in the premises, from taking or instituting, or causing or advising to be instituted, any action, suit, step or proceeding for the violation of said Act, or from demanding that any of the rates contained therein be given to them or either of them. Let a writ issue accordingly.

WM. LOCHREN, *Judge.*

Dated September 23, 1907.

(Endorsed:) Order for temporary injunction. Ent. T. M. Vol. 36, p. 270. Filed Sept. 23rd, 1907. Henry D. Lang, Clerk.

United States Circuit Court, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, Charles F. Staples, Ira B. Mills, William E. Young, E. A. Evarts, Achille Michaud, O. J. Whiteman, J. Rumsey Reeve, Charles Michaud, and Adolph Michaud.

C. Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum.

163 C. Equity. No. 859.

JAMES T. WOODWARD and WILLIAM WOODWARD and GEORGE GIBBS
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

C. Equity. No. 860.

CRAWFORD LIVINGSTON and JAMES T. WOODWARD
vs.
CHICAGO & NORTHWESTERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES and WILLIAM E. YOUNG.

C. Equity. No. 861.

GEORGE S. BREWSTER and ROBERT S. BREWSTER
vs.
CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

164 C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES and WILLIAM E. YOUNG.

C. Equity. No. 863.

JOHN A. HUMBIRD
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY, a Corporation; Alpheus B. Stickney, Ansel Oppenheim, Sam C. Stickney, Lewis S. Cass, William E. Pinckney, James P. Elmer, Frederick Weyerhauser, James W. Lusk, Robert C. Wight, H. E. Fletcher, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, C. F. Berg, C. H. Tripp, N. P. Johnson, The Northwestern Fuel Company, a Corporation; Western Elevator Company, a Corporation; Lampert Lumber Co., a Corporation; Hubbard Milling Company, a Corporation; Wisconsin Lumber Company, a Corporation; The Simmons Millings Company, a Corporation, and Laird Norton Company, a Corporation.

165 C. Equity. No. 864.

FREDERICK C. BARROWS
vs.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Pine Tree Lumber Company, E. Sauby and Osborn & McMillan Elevator Company.

C. Equity. No. 865.

JOHN J. CARLE
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Daniel L. Bell, E. B. Swygart and P. J. Bowlin.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum.

166 LOCHREN, *J.* (orally):

GENTLEMEN: I feel that it is a subject of congratulation that through this long-continued contest there has been such uniform courtesy displayed by counsel on both sides, not only towards the court, but towards each other. The cases have been fully and ably presented to the court, upon both sides. If circumstances permitted, I should be glad to give the cases further consideration than I feel myself able to. In view of the necessity of attending to other business, and especially in view of the fact that the October term in Minneapolis is coming on, I think it better that I dispose of the

cases according to my first impressions than to detain them for further examination, which would hinder the ultimate settlement of the issues.

These suits have been brought by one or more stockholders of each of nine railroad companies doing business within the State of Minnesota, and each of them also engaged in interstate business, claiming that the rates fixed by the Railroad and Warehouse Commission, and which have been termed by counsel the "Merchandise rates," as well as the rates fixed by the legislature of the state by the act of April 4th of the present year (called the passenger rate law), and the rates also fixed by the legislature by the act of April 18th of the present year (chapter 232 of the statutes of this year) are so low as to not afford adequate compensation to the railroad companies for the services that they are required to perform and a reasonable return upon the property which is invested by these railroad companies, and used in the business, and therefore are confiscatory under the provisions of the constitution of the United States that no state shall deprive any person of life, liberty or property without due process of law, or deny equality under the laws; that the re-
167 quiring of the railroad companies to do business at these rates would not afford adequate compensation, and are equivalent to taking their property without due process of law. These bills of complaint are met by demurrers upon various grounds, one of which is, that, being brought against the attorney general and other state officers, but especially the attorney general, they, in fact, amount to actions brought against the state, which are prohibited, so far as the federal courts are concerned, by the eleventh amendment to the constitution of the United States. This matter I disposed of at a preliminary hearing, contrary to that contention, holding that although the state is interested in this matter, these suits are not, in terms nor in necessary effect, actions against the state. No property of the state is affected; no revenues of the state are affected, by the result of the litigation. And although the eleventh amendment to the constitution prohibits suits, or actions, against the state, by citizens of another state or of a foreign country, the fourteenth amendment provides that the state shall not deprive any person of life, liberty or property without due process of law. There must be some way to enforce that provision of the constitution. It is a provision which requires no action of congress to make it effective. It is a prohibition against the state. And if the state, by any act attempts to deprive anyone of life, liberty or property, without due process of law, the courts must provide some adequate remedy for the protection of such person. It would be a reproach to the courts did they fail to provide an adequate remedy in a case of that sort. And it is unnecessary in these cases to hold that the eleventh amendment would be ineffective as against the later provision, in the fourteenth amendment, if the remedy can be reached in another way; and it seems to me that it can—by tying the hands of the offi-
168 cers of the state, if necessary, in a proper action, and restraining them from attempting to enforce or put in effect a provision of the law of the state which is unconstitutional under the

terms of the fourteenth amendment. This has been done in so many cases that it seems to me it does not now require argument to sustain that position. And I therefore hold that that ground of the demurrer is not well taken.

Another ground is that the bills are multifarious, in joining the Warehouse and Railroad Commission and the attorney general, because the acts complained of are separate and distinct acts and the acts of different bodies. The order of the Railroad and Warehouse Commission, of September 6th of last year, was promulgated by that commission under the authority of a legislative act; and, as has been decided in many cases, such an order has the same effect as a legislative act; that is, that the legislature has a right to empower administrative bodies to act in respect to this matter of rates and other matters of regulation concerning public corporations engaged in the business of transportation, so that its order has the same effect as a legislative act. And the other two acts complained of are acts passed by the legislature. They all amount to legislation that has been put forth by the state. And it seems to me that complaints against all these acts may properly be joined in one action, and that the Railroad and Warehouse Commission have such charge in respect to the enforcement of these rates that they can properly be made defendants in an action of this kind, as well as the attorney general.

Another objection is that the bills do not show compliance with the 94th Equity Rule, such compliance being necessary to permit actions of this sort to be brought by stockholders, whereas, matters in which a corporation is concerned are properly under the
169 management only of the officers and directors of the corporation, who should ordinarily be parties to an action to enforce corporate rights, and providing that such suit will not be allowed to be maintained by a stockholder unless it appears that he has first applied to the officers and directors of the corporation, demanding that they should enforce the rights which he complains are being infringed, and secure the safety of his property, the property being, of course ultimately the property of the stockholders, and only upon their refusal to do so will he be allowed to bring an action to protect himself. It seems to me that that has been done sufficiently in these cases. In every one of them an application has been made, either to the directors or to the controlling officers of the corporation whose duty it would be, in a proper case, if it was necessary, to call a meeting of the directors to act upon the matter, and either where the directors have met together or where the matter has been disposed of by the officers, the stockholders have been met with a direct refusal to take any action to protect the property against these alleged illegal attacks upon it. The reason alleged by the officers of the company and by the directors for not taking such action was, not that they doubted or denied the claim of the stockholders that this order and these acts were confiscatory, and null and void under the constitution, but that by the provisions of the acts themselves such severe penalties were denounced for any attempted violation of the acts, that they ought not to be called upon to incur the danger of those penalties, and would not assume that danger, and, for that

reason, would not act in the matter. And it seems to me, in view of the severe penalties denounced by these acts of the legislature, that the officers of the corporations could not have done otherwise than to have refused to act under those circumstances, where their
170 action would have laid them liable to severe penalties; and every subordinate who under their direction should attempt to violate these provisions, being also liable to like penalties, would also refuse. There is no question but that such legislation is vicious, almost a disgrace to the civilization of the age, and a reproach upon the intelligence and sense of justice of any legislature which could enact provisions of that kind. In case of the refusal to issue a ticket at a certain rate which is fixed by the legislature as proper, but which the railroad companies hold to be void and unconstitutional, (and which would be an act of itself not immoral nor malum in se, but would ordinarily afford the person who was refused the privilege of a ticket a right of action against the railroad company,) in case he was in the right and the refusal was wrong, there would be no question but that in a civil action any such person would receive an adequate remedy; there would be no danger that any court or jury would refuse to give ample damages. Beyond question, the result of actions of that kind would be that the damages would almost certainly border on the excessive, instead of failing to remunerate the party for any wrong he would suffer on account of such a refusal. But under the provisions of these laws, acts not immoral or wrong in themselves, but which are only unlawful because prohibited, would entail upon the person refusing to comply with such laws the position of being convicted of a felony. They make the refusal a felony, and impose a punishment very unusual—a fine that might be to the amount of $5,000, or imprisonment in the state prison to the extent of five years, or both, in the discretion of the court; punishments which are applied only to the very highest crimes short of homicide of which men are ever guilty; punishments
171 which would be deemed adequate in cases of burglary, highway robbery, or crimes of the highest character, short, as I say, of homicide. There is no doubt that the directors and officers of railroad companies were entirely justified in refusing to take the hazard that would fall upon them (and their employees, if they acted under their advice) by taking any steps to save the stockholders from the consequences of these laws.

I agree with counsel for the defendants that these matters must be considered separately. For instance, the order of the Commissioners of September 6, 1906, which went into effect on November 15th of the same year, must be considered by itself upon the charge that it did not afford adequate compensation to the railroad companies and had the effect of confiscating their property. If it did not have that effect, it would not have that effect if the subsequent acts added to it had that effect. And so with the act of April 4th—the passenger act. If that did not reduce the revenues of the companies to a degree which would leave them without sufficient compensation, even after the reducing effect of the order of the commissioners, then that would not be unconstitutional, it would be

constitutional and proper. And the same remarks would apply to the act of April 18, which affected the rates chargeable upon commodities. It would have to be considered, of course, with reference to the reductions theretofore made by the two previous acts; but if that still left enough to compensate the railway companies for their services rendered in the transportation, and left an adequate return upon the value of the property which was used in the transportation within the state, the complainants would have no cause for complaint. But of course the latter must be considered with refer-
172 ence to the reductions made in the earlier order and the earlier act. Now, I will not attempt—it would be impossible that I should do so—to go through with the different estimates that have been made in respect to the expenses of the railroads in the transportation of freight and passengers, state and interstate, and what is applicable to the state properly.

It is argued that this court has not jurisdiction of the case because it does not raise any federal question, for the reason that there is no controversy as to the effect of the constitutional provision in the fourteenth amendment, that I have referred to, because it is admitted on the part of the defense that the construction claimed for that provision by the complainants is the true construction and that there is no controversy in relation to it, and that the only controversy arising upon this hearing is in relation to matters of fact alone. With respect to that, I might say that there is not really any controversy in respect to matters of fact, until we come to the ultimate facts in the case. There is no controversy as to what the order of the Railroad and Warehouse Commission actually was; there is no controversy as to the terms of that order or its effect upon the different articles of merchandise in respect to which it fixes the rates; there is no controversy in relation to the purport of the two different acts of the legislature to which I have referred; there is no controversy with respect to the showing which has been made by the railroad companies as to the cost of transportation, their operating expenses in the past, and the anticipated increase in those expenses in the present year; nor is there any controversy with respect to the amount invested in these railroad properties, in the first place,—there has been no attempt to show that they are differ-
ent from what they are claimed to be in the showing made by
173 the railroad companies themselves; nor with respect to the fixed charges, which are encumbrances upon these different properties, nor with respect to the amount of stock outstanding in these different companies. In relation to some of them, (the Chicago Great Western in particular), I believe that the evidence is that there are no outstanding bonds—anything which is usually reckoned by railroad companies as among their fixed charges; but it does appear that there are outstanding debentures, and that there are classes of preferred stock—several of them, each class in its order being allowed a certain amount of dividend before the next class in order would be entitled to any, and so on until we come to the common stock. And I am inclined to think that debentures of that kind, and preferred stock, which is entitled to dividends before anything

goes to the common stock, are very much of the same nature as bonds or securities—which would be entitled to the payment of interest upon them before there would be any dividends on the preferred or common stock; that they are very much of the same character as these others which are reckoned under the head of fixed charges.

Now, the showings by the different railroad companies amount to this: That in the years past, including the year 1906, there was not enough revenue from the business carried on within the state, including business that was entirely local to the state and the share of the interstate business which would properly be chargeable to or applied upon the property of the railroad companies within the state, to entirely pay the fixed charges outstanding and afford any adequate dividend or compensation to the owners of the stock itself—which represents the property—after paying all the operating expenses. And the showing was, in some cases, that there were no charges made, in the keeping of the accounts, under the head of or
174 for or on account of depreciation in the road or rolling stock—the property of the company. It is evident that there ought to be a proper account under that head; that a railroad, like everything else, will wear out in time; and they have been used so long in this country that there can be a reasonable estimate of the percentage of loss each year from depreciation of the roadbed, culverts, bridges, rolling stock; and that it would be proper to lay aside a reasonable amount to furnish replacements, renewals and repairs when needed, and that if that was not done the railroad company might soon be in a position in which it could not keep up, with the receipts that it was getting, and maintain its property in an efficient state to render such service as the public is entitled to receive from it. Now this is a matter in which the public has an interest, as well as the railroad companies and the stockholders of the railroad companies. Some of us older men can remember, in the early days, about the time when the state was admitted, the great anxiety that the people of the state had at that time that railroads should be brought into the state; that persons having capital should be induced to bring railroads into the state; that it was necessary for the prosperity and the upbuilding of the state that it should have railroad connections with the rest of the world; and that great and successful efforts were made to get large subsidies, in the way of land grants, from congress; and that almost every community in the state, every village that had hopes of getting a railroad to it, counties, and all the municipalities were ready to vote, and did vote, bonds as subsidies, for the purpose of inducing men with capital to come into the state and build railroads. They could foresee that it was necessary for the
175 advancement and prosperity of the state, to bring emigrants and others into the state, and change what at that time was a large waste into the sites of prosperous cities, thriving towns and villages and farms, and therefore to have railroads built giving them connection with the rest of the world; that there should be a way to take farm products, grain, cattle, hogs, everything that was produced by the farmer, in the quickest manner to the best market, and to bring into the state commodities that were needed by its

people. And that was done. Railroads were built. We have them. We see the effect of the railroads. And I think every one will admit that no institutions that we have had in the state have done so much to bring about the present state of prosperity, upbuild cities and cover the state with prosperous farms and with a large population, as the railroads. And it would certainly be a very great calamity if these railroads were dealt with in such a way as to destroy their efficiency and usefulness to the inhabitants of the state. But notwithstanding this, there is, of course, a danger that the mass of the people, looking upon these large aggregations of wealth, seeing occasionally a person who is reputed to be or who has become wealthy on account of his connection with these railroads, and that they are getting considerable amounts of money from the people of the state as compensation for the services that they are performing, will manifest a disposition to reduce this compensation; to save to the people a certain amount of what they have to pay when they patronize the railroads as passengers, or have commodities of any kind to ship upon the railroads. It is quite natural that they should want to have those charges reduced to the lowest point, at any rate, which would be consistent with keeping up the efficiency of the railroads and the advantages which they are receiving from them.
176 There is a danger that this feeling of selfishness may lead them too far, and reduce this compensation so much that it will not enable the railroads to serve them with efficiency—to keep up their roadbed, culverts, bridges and everything so that they will be entirely safe for the transportation of passengers and freight, and to keep the rolling stock in the best state of efficiency, and enable them to provide the best service attainable. And that is exactly what those corporations are required to do; they are required to exercise the highest degree of care in relation to the transportation of passengers, and a high degree of care in relation to the transportation of freight, and it is certainly for the interests of the people that they should be enabled to do this; and it would be a very short-sighted policy which would reduce the compensation of these railroads to a degree that would disable them from performing these services fully and fairly for the benefit of the people.

A question has been raised in the case that these rates fixed by the Railroad and Warehouse Commission and by the legislature trench upon the authority of congress under the commerce clause of the constitution, which gives to congress the entire control and regulation of commerce among the states and with foreign nations and the Indian tribes. There is no question made that this is an exclusive power and that no state has any right to trench upon it in the least, and the decisions of the supreme court have been quite frequently to the same effect. In the Eubank case, and in the case of the transportation from St. Louis to Texas (I do not remember the title), where the legislature provided that the shipper could not recover any greater amount than was stated upon the bill of lading, and where, after the bill of lading had been issued, the Interstate Commerce Commission, or some persons acting through
177 its authority, raised the rate, and the railroad company collected the rate, which was above the amount named in the

bill of lading, the supreme court held that an act of that kind by the legislature was matter affecting interstate commerce and not within the power of the legislature to enact. There were several of those decisions referred to on this hearing.

It is claimed on the part of the complainants that these regulations of rates in this state, passenger and freight, do interfere with interstate commerce, and instances have been cited as to their effect upon transportation between, we will say, the Twin Cities, and points on the border line of North Dakota; a comparison between the rates which the state has fixed, which would govern as between these cities and Moorhead, and rates which would govern transportation across the river to Fargo. And it has certainly been very persuasively argued that these rates, fixed by the Minnesota legislature in relation to transportation in Minnesota alone, do of themselves necessarily interfere with interstate commerce, and, under the provisions of the Hepburn law, prohibiting discrimination in respect to localities similarly situated, it is claimed that if the railroad companies themselves, without authority of the state, should fix the present rates between these cities and Moorhead and the interstate rates now existing between these cities and Fargo (and the same with Grand Forks and other places) that they would be liable to prosecution for discrimination. And it would seem to be very difficult to avoid that conclusion, and the conclusion that these rates fixed in respect to Minnesota do necessarily and directly affect interstate commerce. But on the other hand, we have decisions of the Supreme Court, going back at least as far as the case of Munn vs. Illinois in the 94th, U. S. and the Granger cases in the same
178 volume, and repeated by very many decisions since and up to the present time (the last one being what may perhaps be termed the dictum of Mr. Justice White in the case which was decided only on the 19th of April last), to the effect that the state has the right to fix rates in respect to local business within the state; that each state has that right. That has been, as I say, decided over and over again by the supreme court. And as it is a fact that if these rates fixed by the Minnesota legislature do interfere with interstate commerce, it is not simply the rates between here and Moorhead which interfere with it, but it would be as well the rates fixed to any point near the borders of the state; the rates in the state to Willmar, or Detroit, or Crookston, would, in the same way, to a lesser degree, interfere with the interstate rates that existed prior to that time between these cities and points in North Dakota. A holding that they did so interfere and for that reason are unconstitutional, if held at all, would apply, it would seem to me, to these rates entirely throughout the state. The state is bordered on all sides by other states, and I do not think it can be held that the rates simply to Moorhead might be unconstitutional and the rest of them constitutional. But in view of the decisions of the supreme court, to which I have referred, and which have been so continually adhered to down to the present time, it seems to me it would be very improper that I should attempt, on this preliminary hearing in this case, to make a holding entirely contrary to those holdings of the

supreme court. I should hesitate very much before doing so. Although I do not think I ordinarily hesitate in any case to rule as I deem to be correct according to law, I certainly do pause before holding that these rates are not within the power of the legislature, if they are fairly compensatory.

179 I have no doubt that congress might very properly, under the constitutional provision giving it the entire power of control over interstate commerce, assume control of the avenues of interstate commerce—of the railroads which are engaged in interstate commerce, and of all rates which are collected by those railroads, whether within the states or without the states; because the matter of those rates would affect these avenues of interstate commerce, might effect their ability to continue as avenues of interstate commerce. The rates if they were fixed by the states might be fixed so low in one state, and another, and all of them, that the railroads could not exist and could not perform their functions as carriers of interstate commerce; and for the purpose of securing these railroads as carriers of interstate commerce, congress would have the power under that provision, to take the entire control of the regulation and the rates which the carriers of interstate commerce, upon the avenues of interstate commerce, would have the right to charge, the same as congress has assumed the right, under the very same clause, to control the navigation of the coastwise waters, bays and lakes, and the rivers running through the country—even if the rivers are entirely within a particular state. They have as much control of the Mississippi River above the Falls of St. Anthony as they have between St. Louis and New Orleans; the same control of the Minnesota River, which is entirely within the state—both of which streams have been used for the purpose of navigation within my recollection. On the upper Mississippi, above the falls, there were two lines of steamboats, before the war, for some years; and upon the Minnesota River there were several lines of steamboats, running as far up as Fort Ridgeley, I think; and after congress assumed the

180 control of navigation entirely, it applied this control to those rivers just as much as to rivers that run between states and through several states, and applied it to the bays and inlets on the coasts of the ocean, where there was navigation running from one state to another. The same with the coasts upon the Great Lakes. I think there is no doubt but that matter would be within the control of congress. But, as has been held by the supreme court in many cases, where congress has the power to exercise control, as long as it fails to exercise it the states may exercise control in all matters that are proper—police regulations at any rate. And until congress does exercise that control, and certainly while the supreme court continues to hold, as it has, that the states may regulate the local commerce that is entirely within the state, I do not think it would be proper that I should attempt to hold that these acts are void as invasions of the right of congress to control exclusively the avenues of interstate commerce, although I must confess that the arguments to the effect that these particular acts of the Minnesota legislature do

interfere, necessarily and directly, with interstate commerce, are extremely cogent.

Now, with respect to the order of the Railroad and Warehouse Commission which went into effect on the 15th of November last, and which was accepted by the railroad companies, and which they acted under from that time to the commencement of this action, and in respect to the passenger rates, which were fixed by the act of April 4th of the present year, and were accepted by the railroad companies, it is claimed that no preliminary injunction should issue having the effect to stop the operation of that order and that act, and that the office of a preliminary injunction is simply to keep matters in statu quo until the final decision of the case. That
181 is, ordinarily, the effect of a preliminary injunction, and ordinarily it ought not to be extended beyond that. It is true that there may be cases—for instance, where a trustee of property is attempting to put that property in the hands of a third person and to defraud the cestui que trust of the property or of its use or benefit, and where that is made clear, and where it has not gone fully into effect but has partly gone into effect and that is made clear, a preliminary injunction may be made so far mandatory as to require,—where the property has been partly taken away from the hands of a trustee, perhaps by his own fraudulent consent, and the cestui que trust is likely to be deprived of it—that even a preliminary injunction may be made mandatory so far as to require that that property be restored to the hands of the trustee or into such hands as the court may place it, to preserve it for the benefit of the cestui que trust. But that exercise of authority ought not to extend beyond cases where there is actual fraud; where the person receiving the property has no fair claim of right, no fair color of right to the property. If he can show that he has a fair color of right which may be litigated, he ought not to be deprived of an opportunity to preserve the status quo until the matter should be properly determined. Now, in this case, in respect to the rates fixed by the Railroad and Warehouse Commission, it is claimed on behalf of the state—and claimed, no doubt, honestly—that these rates are not confiscatory; that they do afford an adequate compensation for the services rendered, in view of the property which is used in the business, and that they are entirely valid; and the same way with the passenger rates. The state insists—and no doubt entirely in good faith—that these rates are compensatory; that these acts are not confiscatory; that they are not in violation of
182 the constitutional provision in any manner. And it seems to me, under those circumstances, that the preliminary injunction cannot go against the enforcement of the rates fixed by the Commission, nor the passenger rates which have been accepted by the railroads and are in operation. I say this without any reference to the fact that the court would have no right to fix rates if it should be determined to enjoin either of these rates. And this will obviate the necessity, upon this hearing, of determining whether the rates fixed by the Commission, or the passenger rates, together or singly are confiscatory, and do not afford reasonable compensa-

tion for the services rendered and a proper allowance with respect to the property employed. These, I think, need not be considered.

But the act of April 18th, fixing the commodity rates, has not yet gone into effect. It has been restrained by the preliminary order of this court. And if it appears on this hearing that the rates fixed by that commodity act, in view of the lessening of the rates by the Railroad and Warehouse Commission and the lessening of the rates by the act of April 4th, are not sufficient to be compensatory, and are in fact confiscatory, the preliminary injunction ought to go against the putting of those rates into effect. As has been said, the showing in the case is that under the rates that were in effect prior to any of these mentioned going into effect, the amount of compensation received by the railroad companies for the services done within this state, in respect to transportation within the state, of property and persons, was not compensatory; that in the case of the stronger roads, although it came very nearly being compensatory, in relation to the others they were far from compensatory. And it was virtually admitted that the effect of the order made by the Railroad and Warehouse Commission was to reduce
183 the amount of compensation which the railroad companies would receive upon the articles that were covered by that order, on merchandise within the state of Minnesota, some 20% to 25% (I think that appeared in the report made by the Railroad and Warehouse Commission to the legislature) and that the effect of the act of April 4th, with respect to passenger rates, cutting the rate from three cents to two cents per mile (which, upon the face of it, would be a cut of 33⅓%) was in fact, in view of all conditions, actually a cut of about 22% or 23% of the amount which was paid before for like services. It seems to me, upon this evidence of the conditions before either of those new rates were put into effect, and the reductions made by those rates, that if there is added the reduction which is attempted to be made by the commodity act, it will reduce the compensation received by the companies below what would be a fair compensation for the services performed, including an adequate return upon the property invested. And I think, on the whole, that a preliminary injunction should issue, in respect to the rates fixed by Chapter 232, talked of as the commodity rates, and that there should be no preliminary injunction as to the other rates, although the matter as to whether they are compensatory or not is a matter which may be determined in the final determination of the action.

An order will be entered overruling the demurrers in each case.

Endorsed: "Filed Sept. 23, 1907. Henry D. Lang, Clerk."

184 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on the therein-named Edward T. Young, as Attorney General for the State of Minnesota by handing to and leaving a true and correct copy thereof with him and by exhibiting to him the Court's Seal and Clerk's signature on the original writ personally at St. Paul in said District on the 24th day of September A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.
T. J. SHEEHAN, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on the therein named Northern Pacific Railway Company by handing to and leaving a true and correct copy thereof with Howard Elliott, President of above named Company and exhibiting the Clerk's seal and signature on the original, personally at St. Paul in said District on the 24th day of September A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.
T. J. SHEEHAN, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on James Manahan, Geo. S. Loftus J. C. Applegate, John H. Grass, B. E. Sundberg, H. Julius, J. Ritter, members of the Shippers' Association by handing to and leaving a true and correct copy thereof with each of them and exhibiting the Clerk's seal and signature on the original personally at St. Paul in said District on the 25th day of September, A. D. 1907.

185 WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

186 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD, Complainants,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud, Defendants.

The President of the United States of America to Northern Pacific Railway Company, its officers, directors, agents, servants and employés, and each of them, Edward T. Young, as Attorney General of said State of Minnesota, and E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, and each of them, and all other persons and each of them, from and after the time that they shall have knowledge of the Order for a temporary injunction herein, Greeting:

Whereas, in the above entitled cause depending in the Circuit Court of the United States for the District of Minnesota, Third Division, in Equity, an Order was made and entered by said Court under date September 23, 1907, directing that a writ of injunction issue restraining and enjoining, pending the final hearing of this cause, and until the further order of the Court in the premises, the defendants above named, and each of them, and all other persons and each of them, from and after the time that they shall have knowledge of such Order, from doing certain acts in said Order set forth, and hereinafter more particularly mentioned.

Now therefore, know ye that the said Northern Pacific Railway Company, its officers, directors, agents, servants and employés, and each of them, are enjoined and restrained, pending the final hearing of this cause, and until the further order of the Court in the premises, from publishing, adopting or putting into effect the tariffs, rates or charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission," or any thereof.

That you, Edward T. Young, as Attorney General of said State of Minnesota, are, pending the final hearing of this cause, and until the further order of the Court in the premises, restrained and enjoined from taking or instituting any action, suit, step or proceeding to enforce the penalties and remedies specified in said Act, or either thereof, or to compel obedience to said Act or compliance therewith, or any part thereof.

That you, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, and each of you, and all other persons, and each of them, from and after the time that they shall have knowledge of said Order, are restrained and enjoined,

pending the final hearing of this cause, and until the further order of the Court in the premises, from taking or instituting or causing or advising to be instituted any action, suit, step or proceeding for the violation of said Act, or from demanding that any of the rates contained therein be given to them or either of them.

187 Witness: The Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of September, 1907.

Issued at my office in the City of St. Paul, under the seal of said Circuit Court the day and year last aforesaid.

[SEAL.] HENRY D. LANG, *Clerk.*

UNITED STATES OF AMERICA,
District of Minnesota, Third Division, sct:

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing writ of injunction with the original thereof, which is in my custody as such clerk, and that the said writ of injunction is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the seal of said Court. Done at my office in St. Paul, Minnesota, this 23rd day of September, 1907.

[SEAL.] HENRY D. LANG, *Clerk.*

(Endorsed:) Certified Copy of Writ of Injunction. Filed Oct. 7th, 1907. Henry D. Lang, Clerk, By, Louise B. Trott, Deputy.

[Endorsed:] No. Ent. 857. Equity. United States Circuit Court, State of Minnesota. Third Division. Charles E. Perkins and David C. Shepard, Complainants, vs. Northern Pacific Railway Company, et al., Defendants. Certified Copy of Writ of Injunction.

188 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD, and ADOLPH E. MICHAUD.

Separate Answer of E. T. Young.

The separate answer of the defendant Edward T. Young, to the bill of complaint of the complainants above named, respectfully shows:

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or

may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto says:

I.

This answering defendant admits the residence of the complainants as alleged in the complaint. That the defendant, the Northern Pacific Railway Company is a corporation organized under the laws of the State of Wisconsin. That this defendant, Edward T. Young, is a citizen of the State of Minnesota and is the Attorney General of said State. That the defendants Ira B. Mills Charles F. Staples, and William E. Young are the members of and constitute the Railroad & Warehouse Commission of the State of Minnesota, and are residents of said State, and that the defendants Evarts, Whiteman, Reeves and Michauds are residents of the State of Minnesota.

189 Admits that the defendant Railway Company is operating lines of Railway as a common carrier of passengers and freight in and through the States mentioned in the bill of complaint herein.

II.

This defendant admits that the lines of railway operated by the defendant Railway Company are operated as one entire system and upon information and belief admits that the stock and bonds of said Company outstanding represent said whole system; he admits that a large part of the business of said defendant Railway Company is the transportation of interstate commerce, but this defendant denies that there is any necessary confusion or intermingling of the business transacted by said Railway Company, which is wholly local to each of the States in which it operates, with that which is interstate commerce, and alleges that the amount and character of each, and the cost and productiveness of each, are entirely capable of being segregated and ascertained, and that the same have been so segregated and ascertained as a matter of common practice amongst railroads for many years past.

III.

He believes and admits that the greater portion of defendant Railway Company's lines have been judiciously located, but defendant has been informed and believes that certain of said lines have not been, and therefore he denies and believes the denial to be true, that all of said defendant's said lines have been judiciously located, and as to what portions and how much of said defendant's said lines have been judiciously located this defendant requires proof, if the same be necessary.

IV.

He is informed and believes it to be true, that the par value of the stock and bonds outstanding on account of said defendant Railway

Company's said lines is greatly in excess of the actual original
190 cost of constructing and equipping the same, and much greater than the cost of reproducing the said lines and equipment would be, and much greater than the present value of the same. and that the original cost per mile of constructing and equipping that portion of said Company's lines within the State of Minnesota, is much less than the cost per mile as to the part of said lines which are without the State of Minnesota. That this defendant is unable to state the exact value of the said Company's property, either as to its whole line or as to that portion within the State of Minnesota, and asks that the complainants be required to present proof thereof.

V.

Further answering this defendant avers that prior to the 6th day of September 1906, Ira B. Mills, Charles F. Staples and William E. Young, as the Railroad & Warehouse Commission, in their official capacity as aforesaid, made an exhaustive investigation of the so-called merchandise rates charged by the defendant, the Northern Pacific Railway Company, and other railroads in the State of Minnesota, for the transportation between points in Minnesota, of the merchandise of the kind, quality and class described in Exhibit 1 attached to the complainants' bill of complaint. Pursuant to the statute in such cases made and provided, they conducted hearings in the course of said investigation, dye notice of the same having been given to the railway companies interested. That the defendant the Northern Pacific Railway Company, duly appeared answered and took part in said proceedings, and the Railroad & Warehouse Commission of the State of Minnesota then and there had full jurisdiction and authority, both of the subject matter and of said investigation and of said defendant Northern Pacific Railway Company, for the purpose of conducting said hearing, receiving and considering the evidence adduced thereat, and fixing reasonable, just and equal
rates for the transportation between stations in the State of
191 Minnesota by common carriers, of merchandise of the kind and class described in Exhibit 1; and said defendants as members of and constituting said Commission, duly heard and gave due consideration to the voluminous and comprehensive evidence, much of which was submitted by and on behalf of said defendant Northern Pacific Railway Company, and as a result of said investigation and their consideration of the evidence adduced therein, said defendants constituting the Railroad & Warehouse Commission, as aforesaid, on the 6th day of September 1906, made the Order referred to and complained of in said bill of complaint, and in and by said Order fixed the schedule of rates in said bill of complaint referred to and complained of, and set forth in and by said Exhibit 1, which said Exhibit 1 is hereby admitted to be a true and correct copy of the Order made on said day, and schedule referred to in said Order of September 6th, 1906.

VI.

That said defendants in pursuance of their official duties in the premises, made said order by reason of the fact that by the evidence adduced at said hearings, and by other competent and sufficient information, they were informed and convinced, and this defendant now believes and alleges, that the rates theretofore charged by said defendant Railway Company for the transportation of said commodities between stations in Minnesota, were on said September 6th, 1906, and theretofore, unequal, unjust, unreasonable and excessive, exacting from the public an unreasonable large sum for the services rendered and yielding to said Railway Company an unreasonably high return, in that said rates, together with said defendant company's other receipts from traffic local to Minnesota, produced a sum considerably more than sufficient to pay the cost of handling said traffic, together with a fair return on the value of the property devoted to the same.

VII.

That said defendants, acting solely as the Railroad & Warehouse Commission of the State of Minnesota, were further induced
192 to make the said Order by reason of the fact that after considering the evidence adduced at the said hearings, and other competent and sufficient information, they were informed and convinced and this defendant alleges believing it to be true, that the rates so fixed by them in their said Order of September 6th, 1906, and the accompanying schedule. upon the merchandise and articles therein named, for the transportation of the same between points in the State of Minnesota, were then and are now, in every respect, equal, just and reasonable as to the said defendant Railway Company, and of the other stockholders of said company, and this defendant now avers that the said rates yield to said defendant Railway Company a fair return upon the present value of its property, including both its line and equipment used by it in said traffic between points in the State of Minnesota, as such value is, or may be ascertained, having due regard for the original cost of construction of said lines of other property, the amount expended in permanent improvements thereon, the amount and market value of said company's stocks and bonds, and the present as compared with the original cost of construction, the probable earning capacity of the property under said rates, and the sum required to meet the necessary and lawful operating expenses of said company, together with all other elements affecting the value of said property, which are proper to be considered.

VIII.

Further answering this defendant respectfully avers and submits that the Orders of September 6th, 1906, and May 3rd, 1907, and the said Act of April 18th, 1907, relate to and effect the carriage of freight exclusively within the State of Minnesota and between points therein, and that they do not purport to nor do they in any manner affect or burden interstate commerce, and this defendant de-

nies that the existence or maintenance of the rates provided in said Orders, and Acts can in any manner affect, change or lower any other rate or rates maintained by said defendant Railway Company, which are just and reasonable; nor can the same constitute discrimination as to any other rate, if such rate is just and reasonable,
193 in itself; nor effect, nor constitute discrimination as to any interstate rate maintained by defendant Railway Company whether the latter is reasonable or otherwise.

IX.

This defendant admits that if the said Orders of September 6th, 1906, and May 3rd, 1907, did not permit rates, or if either of the Acts of the Legislature set forth and complained of in said bill of complaint, did not in and of itself permit rates which would yield to defendant, Northern Pacific Railway Company, a return sufficient to pay the cost of the service required in transacting the business to which said rates are applicable, together with a fair return upon the value of the property devoted by said Company to said traffic, and the convenience and use of the public therein, the result of enforcing any such order or law, and thereby compelling the defendant Railway Company to accept, insufficient compensation for the service rendered, would be, as complainants allege, a confiscation of its property, a taking thereof without due process of law, and a denial as to said company and its stockholders of the equal protection of the law, and violative of the Constitution of the United States and especially the Fourteenth Amendment thereof.

Further answering this defendant alleges that the rates provided in and by said Order of September 6th, 1906 are equal and just, and are more than adequate for the service performed; and that after ample and full consideration of said rates by the defendant Railway Company, its officers, agents and directors, and as this defendant believes, by the complainants, the said rates were duly accepted, adopted and promulgated by said defendant Railway Company and went into full force and effect on or about the 15th day of November 1906, and have ever since been maintained and used by said Company as its regular and duly published rates for the transportation of the merchandise described in Exhibit 1, between
194 stations in the State of Minnesota, and no objection or protest was made against the same by the defendant Railway Company, these complainants, or any other person, until the passage of the Acts of the Legislature mentioned in said bill of complaint and hereinafter referred to.

X.

That no application for permission to change or raise said rates has been made of the railroad & Warehouse Commission of the State of Minnesota by the defendant Railway Company, or the complainants, or any other persons, since the same went into effect on November 5th, 1906.

XI.

This defendant admits that on the 3rd day of May, 1907, they duly made the Order referred to and described in said bill of complaint and attached thereto as Exhibit 2 thereof.

That as it appears from said Order (Exhibit 2), the same is an extension of the terminal rates provided for in the Order of September 6th (Exhibit 1) to certain stations in the State of Minnesota; that the same considerations and conditions which entered into and controlled the validity of said Order of September 6th, 1906, enter into and control said Order of May 3rr, (Exhibit 2), except that the effect of said order upon the revenues of said defendant Railway Company is comparatively much less than is the Order of September 6th, 1906. All of the allegations hereinbefore contained with reference to the Order of September 6th (Exhibit 1) are applicable to and are hereby repeated as to said Order of May 3rd (Exhibit 2).

XII.

This defendant further avers that, as provided by the statutes of the State of Minnesota, the defendant Railway Company had the right to appeal to the District Court of the State of Minnesota, from the Orders of the Commission so entered on Sept. 6th, 1906, and May 3rd, 1907, within thirty days after the making thereof;
195 that said District Court is a court of record and general jurisdiction, duly organized and existing under the Constitution and Laws of the State of Minnesota, and having and exercising all the powers of a court of chancery and a court of common law, as the same are known and recognized under our system of jurisprudence; an- said Court is fully authorized and empowered to entertain and consider actions and defenses, both legal and equitable. That had such appeal been taken, the equality, justness and reasonableness of the rates heretofore maintained by said defendant Company, as well as those fixed by the Order of the Commission in said Orders of September 6th, 1906, and of May 3rd, 1907, would have been for trial before said Court de novo, and upon such trial and order and findings of said commission would have been only prima facie correct; that in said proceeding and upon said appeal all of the rights of said complainants would have been protected and every objection to the Orders of said Commission, and every consideration which might be urged in this action, could and would have been considered by said District Court on said appeal. That as this defendant is informed and believes, no demand was ever made by said complainants, or either of them, upon said defendant Railway Company, its officers, agents or directors, to appeal from the Orders of said Commission made and entered on September 6th, 1906, and the 3rd day of May, 1907, or to take any step in relation thereto, to test the validity thereof, as provided by the laws of the State of Minnesota in that behalf enacted.

XIII.

This answering defendant alleges that if the defendant Railway Company had not itself adopted and published the orders of said

Commission hereinbefore referred to, nor filed with said Commission its schedule of the rates and charges required by said Orders of said Commission, the defendants Ira B. Mills, Charles F. Staples and William E. Young, as said Commission, would have proceeded, upon the expiration of said time for appeal, to enforce said order, as provided by the statutes of the State of Minnesota, by pro-
196 ceeding in mandamus in the said District Court, and in that behalf would have requested the assistance of the Attorney General. That as this defendant is advised, the proceeding above described is the only proceeding which this defendant could take for the purpose of enforcing the orders of the Commission, hereinbefore referred to, and that until the rendition of final judgment in said proceedings of mandamus the defendant Railway Company, its officers servants and agents, are subject to no fine or penalty through, by or on account of said orders whatever, nor is said company in any manner subject to harassing litigation of any kind or to a multiplicity of suits by reason thereof.

XIV.

That in the proceeding by mandamus hereinbefore described the Orders of the Commission would be only prima facie correct, and the defendant Railway Company would have full and adequate means and opportunity to defend against the same, and to urge in such defense every consideration of law and equity, and every fact which the complainants might or could present to this Honorable Court on the trial of this action upon its merits. That this defendant is as he is advised, confined to said proceedings by the statutes of the State of Minnesota, and that any other person attempting to bring an action to compel the defendant Railway Company to comply with said Orders, is confined to a like proceeding, and that it is not true that unless this Court entertains this action and enjoins this defendant as prayed in the bill of complaint herein, that the complainants or said defendant Railway Company will be compelled to defend their rights in a multitude of actions and proceedings, or that they or it will be in any manner deprived of any defense, or even hampered in maintaining each and every defense which it may have to the Orders of the Commission entered September 6th, 1906, and May 3rd, 1907, hereinbefore specified.

197 XV.

Further answering this defendant admits that on or about the 4th day of April, 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act prescribing the maximum rate to be charged for the transporting of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof," and that a copy of said Act is attached to said Bill of complaint marked Exhibit 6; and these defendants further admit that on or about the 18th day of April 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad &

Warehouse Commission," a copy of which is attached to said bill of complaint marked Exhibit 4.

XVI.

This defendant alleges, that under and pursuant to the Constitution and laws of the State of Minnesota, the Attorney General of said State has the right in the exercise of his official discretion, to institute and prosecute in the District Court of said State, in case the said defendant Railway Company refuses or neglects to comply with the provisions of said acts of the legislature, or either of them, and to put into force and effect the schedule of rates and charges provided for in said Acts, mandamus proceedings in the name of the State of Minnesota and on the relation of this defendant as Attorney General and not otherwise, to compel the said defendant Railway Company to obey said laws and to put into force and effect the schedule of rates and charges therein prescribed. That in said mandamus proceedings the schedule of rates prescribed in said acts respectively would be deemed and considered only prima facie reasonable and proper charges and the defendant Railway Company would have full and adequate means and opportunity in such mandamus proceedings to defend against the enforcement of the rates and charges prescribed in and by said acts respectively, and to urge in
198 said defense every consideration of law and equity, and every fact which the complainants might or could present to this Honorable Court on the trial of this action upon its merits. That this defendant is, as he is advised, confined to said proceedings by the statutes of the State of Minnesota, and that it is not true that unless this Court entertains this action and enjoins the defendants, as prayed in the bill of complaint herein, that said Railway Company will be compelled to defend its rights in a multitude of actions and proceedings, or that it will be in any manner deprived of any defense, or even hampered in maintaining each and every defense which it may have to the enforcement of the said acts of the legislature hereinbefore referred to.

This answering defendant denies that he has ever contemplated or intendee or threatened to bring any action or prosecution or take any steps whatever, looking to the enforcement of the provisions of said acts of the legislature, other than said proceeding by mandamus. Defendant further alleges that no application has ever been made to the defendants Ira B. Mills, Charles F. Staples and William E. Young, acting as the Railroad & Warehouse Commissioners, or either of them, by the complainants herein or by the defendant Railway Company, its officers or agents, requesting the exercises by them of their right to modify or change an of the rates or charges provided for by said acts of the legislature

XVII.

Further answering this defendant avers that for many years last past the rates charged by the defendant Railway Company for the transportation of passengers within the State of Minnesota, have been unequal, unjust and exorbitant, and that the rates and charges fixed

and specified in said Act of the Legislature of April 4th, 1907, for the transportation of passengers within the State of Minnesota, are equal, just and reasonable, and if enforced the same will afford to the defendant Railway Company and its stockholders, an ample revenue to pay the necessary cost and expense of conducting said business, together with the proportion of the fixed charges
199 of said defendant Railway Company properly chargeable to said passenger service, and such proper proportion of all of the other legitimate and proper expenses of said defendant Railway Company chargeable thereto, and to yield to said Company and its stockholders, a fair and adequate return upon the value of the property invested in said business. And this defendant respectfully avers that the said Act of April 4th, 1907, relates to and affects the transportation of passengers exclusively within the State of Minnesota and between points therein, and that it does not purport to, nor does it in any manner, affect or burden interstate commerce, and this defendant denies that the existence or maintenance of the rates provided in said Act can in any manner affect, change, or lower any other rate or rates maintained by said defendant Railway Company, which is, or are just and reasonable, nor can the same constitute discrimination as to any other rate or rates, if such other rate or rates is or are just and reasonable in itself; nor effect, nor constitute discrimination as to any interstate rate maintained by the defendant Railway Company, whether the latter is reasonable or otherwise.

XVIII.

That prior to the 18th day of April, 1907, the rates and charges made by the defendant Railway Company for the transportation between stations within the State of Minnesota, of the commodities named in said Act of April 18th, 1907, were unjust, unequal and extortionate, and were much higher proportionately than the charges made by said Railway Company for the transportation of other freight upon its lines within the State of Minnesota and elsewhere; That the rates and charges fixed and provided by said Act of the Legislature of April 18th, 1907, are just, equal and reasonable as applied to said defendant Railway Company and its stockholders, and in truth and fact are proportionately still higher than the rates and charges fixed by said Railway Company for like services in the transportation of other freight in the State of Minnesota and
200 elsewhere and that the rates and charges so fixed by said Act of the Legislature are sufficient to give to said defendant Railway Company and its stockholders, a revenue proportionately sufficient with its other revenue, to permit it to meet its operating expenses, fixed charges and all other proper and necessary expenses in connection with the operation of said Railway Company, and in addition thereto, a fair and adequate return upon the value of the property invested in the business of said Railway Company.

XIX.

Further answering this defendant avers upon information and belief, that no sufficient demand was ever made by the complainants

upon the defendant Railway Company, its officers or directors, requesting the institution of any legal proceedings in the name of the defendant Company, to test the reasonableness or validity of either of the Orders of the Railroad & Warehouse Commission or the Acts of the Legislature mentioned in said bill of complaint, and he avers upon information and belief that this suit is wholly collusive, and is brought, not for the purpose of ascertaining in a speedy and orderly manner the sufficiency of the rates and charges specified in said Orders and Laws, but for the purpose of hindering delaying and obstructing the public officers of the State of Minnesota, charged with duties in connection therewith, in the performance of such duties.

XX.

Defendant on his information and belief, denies that the expense of performing the service of transportation of local traffic between stations in the State of Minnesota is as great as the cost of handling and transporting such traffic in several other states through which said defendant's lines of Railway run. Defendant further denies that the rates for intra-state business per mile of haul should be in all cases greater than the rates per mile upon interstate business, and alleges that if such comparison is to be made in any case re-
201 sort must be had to all the facts and circumstances surrounding the traffic in question.

Defendant admits that the defendant Railway Company's operating and other expenses have increased to some extent, as alleged in the bill of complaint, but on information and belief denies that the said expenses have increased to the extent therein alleged, and on this behalf defendant avers that said Company's operating expenses, both as to traffic local to the State of Minnesota and its interstate traffic, and traffic in other states, for many years have been and now are, largely and unlawfully increased by unjustifiable and unauthorized expenditures of the funds of said Company for purposes not authorized by law or the character of defendant Railway Company, the exact amount or precise nature of such unauthorized expenditures being now unknown to the defendant.

XXI.

Further answering this defendant avers that the defendant Company's lines of railroad in the State of Minnesota are situated in a thriving and rapidly growing section of the State, and the volume of traffic upon said railway, particularly its passenger traffic, and in the commodities referred to in the Orders of said Commission of September 6th, 1906, and May 3rd, 1907, and the Act of the Legislature of April 18th, 1907, will be necessarily greatly increased in the near future. That said freight commodities are of a class and character which enable them to be transported at a very slight cost, as compared with other classes of freight, but notwithstanding that, this defendant charges the fact to be that under the tariffs and charges heretofore maintained by the defendant Company, the freights named in said Orders and said Act of the Legislature were compelled to yield

an unequal and unfair proportion of the entire earnings of said Company from the operation of its lines of road local to the State of Minnesota.

202 XXII.

This answering defendant admits that complainants' Exhibits numbered *s* and 5, are substantially true and correct statements of the matters and things therein set forth and referred to, but allege on information and belief that the same are not in all respects true and in accordance with the facts, and that so far as the same may be material this defendant prays that complainants be required to make proof thereof.

XXIII.

Further answering this defendant denies that the jurisdiction of this Court ought to have been, or can be invoked, in this cause, and he further denies that said complainants are entitled to the relief, or any part thereof, that their said bill of complaint demanded. This answering defendant further alleges that the complainants in and by their bill herein seek to restrain and enjoin the performance by this defendant, as Attorney *H*eneral of the State of Minnesota, of his discretionary official duties and powers, and that the above entitled cause is in truth and in fact a suit against the State of Minnesota, instituted and maintained contrary to the provisions of the Constitution of the United States of America, especially the 11th Amendment thereto, and this defendant for such reason doth now and always protest against the exercise by this Hon*r*able Court of any jurisdiction over this defendant by reason of the facts and matters set forth and alleged in the said bill of complaint.

This defendant prays the same advantage of the aforesaid answer as if he had pleaded or demurred to the said bill of complaint, not admitting, however, that there is any matter or thing in said bill of complaint, contained, material or necessary for this defendant to make answer unto and not herein or hereby well and satisfactorily answered, confessed, traversed and avoided or denied, true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain
203 and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD T. YOUNG,
Defendant.

THOMAS D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for Defendant.

(Endorsed:) Separate Answer of E. T. Young. Filed Nov. 4th, 1907. Henry D. Lang, Clerk.

204 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud.

These repliants, Charles E. Perkins and David C. Shepard saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of defendants above named, Ira B. Mills, Charles F. Staples and William E. Young, for replication thereunto say that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain evasive, and insufficient in law, to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

HOW, BUTLER & MITCHELL,
E. S. ROBERTS,
Solicitors for Complainants.

(Endorsed:) Replication to Answer of Commissioners. Filed Nov. 4th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

205 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

These repliants, Charles E. Perkins and David C. Shepard saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of defendant above named, Edward T. Young, for replication thereunto say that they do and will aver, maintain and prove their said bill to be true, certain and suffi-

cient in the law to be answered unto by the said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in law, to be replied unto, by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

(Endorsed:) Replication to Answer of Edward T. Young. Filed Dec. 2nd, 1907. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

206 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

Come- now the above named complainant, David C. Shepard and suggests and makes known to the Court the death of the above named complainant Charles E. Perkins on the Eighth day of November 1907, and prays that this action shall and may proceed at the suit of and in the name of said David C. Shepard, the surviving complainant, in the same manner and with the same effect as if the same had been instituted originally by said David C. Shepard solely.

Dated April 20th, 1908.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant David C. Shepard.

(Endorsed:) Suggestion of the death of Charles E. Perkins. Filed April 20th, 1908. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

207 Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph E. Michaud.

The death of Charles E. Perkins, one of the above named complainants, having been suggested upon the record.

It is ordered that this action shall proceed at the suit of and in the name of David C. Shepard, the surviving complainant in the same manner and with the same effect as if the same had been instituted by said David C. Shepard solely.

Dated April 20th, 1908.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order upon Suggestion of the Death of Charles E. Perkins. Ent. T. M. Vol. 37, p. 263. Filed April 20th, 1908. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

208 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD, and ADOLPH E. MICHAUD.

Comes now the above named complainant, and presents herewith an amended and supplemental Bill of Complaint in this suit, and moves for leave to file the same without prejudice to the restraining order and temporary injunction heretofore made and entered herein.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

Dated April 20th, 1908.

(Endorsed:) Petition for leave to file Amended Bill. Filed April 20th, 1908. Henry D. Lang, Clerk, Louise B. Trott, Deputy.

209 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD, and ADOLPH E. MICHAUD.

The motion of the complainant above named, for leave to file an amended and supplemental bill of complaint herein, coming on to be heard this 20th day of April, 1908, and there being no objection thereto on the part of the defendants, or either of them, and it appearing to the Court that it is proper that such amended and supplemental bill be received and filed,

It is ordered that said complainant have leave to file *its* amended and supplemental bill herein pursuant to such motion.

Ordered further that defendants and each of them have ten (10) days from the date hereof within which to answer, plead or demur to said amended and supplemental bill, or any part thereof, and that in case no such answer, plea or demurrer shall be interposed within such time, any answer heretofore interposed by any of said defendants to the original bill herein shall stand as and for an answer to the amended and supplemental bill so filed.

Ordered further that the temporary injunction heretofore entered in this cause shall not be prejudiced in any respect by the filing of such amended and supplemental bill, and that the same shall stand and remain in full force and effect as it now stands.

210 Dated St. Paul, Minnesota, April 20th, 1908.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing filing of Amended and Supplemental Bill. Ent. T. M. Vol. 37, p. 263. Filed April 20th, 1908. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

211 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud & Adolph E. Michaud.

Amended and Supplemental Bill of Complaint.

To the Judges of the Circuit Court of the United States for the District of Minnesota, Third Division:

Your orator David C. Shepard, a citizen of the State of Minnesota, and a resident of the County of Ramsey, in the Third Division therein, brings this his Bill of Complaint against Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, and having its principal place of business in the City of St. Paul, in the State of Minnesota, Edward T. Young, a citizen of the State of Minnesota, and a resident of the County of Ramsey, in the Third Division therein, Ira B. Mills, Charles F. Staples and William E., Young, who are each of them citizens of the State of Minnesota and residents respectively of the Counties of Clay, Dakota and Blue Earth therein E. A. Evarts, O. J. Whiteman J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, who are each of them citizens of the State of Minnesota, said Evarts being a resident of the County of Otter Tail therein, said Whiteman being a resident of the County of Sherburne therein, said Reeve being a resident of the County of Stevens therein, and said Michauds being each of them a resident

of the County of Ramsey, in the Third Division therein, and thereupon your Orator avers:

212 I.

The defendant Northern Pacific Railway Company, is a railroad corporation and common carrier of goods and passengers engaged in state and interstate commerce, and owning, operating and maintaining lines of railway in the State of Minnesota and other states. The main line of said Northern Pacific Railway Company extends from the City of Superior in the State of Wisconsin, and the Cities of Duluth, St. Paul and Minneapolis in the State of Minnesota, in a westerly direction through the States of Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the Cities of Seattle, Tacoma and Portland on the Pacific Coast. Its lines of railroad, including its main line and branches, comprise about 5500 miles, of which about 1150 miles line within the State of Minnesota. The whole of its railroads constitute and have constituted one system, and have been and are operated as such. The stock and bonds of the Company outstanding represent the whole system. It is impossible to segregate its stock and bonds so as to say that any part of them, or either of them, stand for or represent its railroad in any State. Its cars, engines, supplies and appliances are, for the most part, used upon the system wherever required. It is impossible to operate the said railroads separately in any State, and for the most part the trains of the said Company necessarily move between different states, the same train and cars carrying both interstate freight and passengers, and freight and passengers locally within each of said State. The principal business of said Company consists of interstate commerce and it is a carrier in such commerce, subject, as to such commerce as your orator is advised and believes, to the sole supervision and control of the United States.

Of the total business of said Company less than six per centum thereof is local within the State of Minnesota. Of the total business of said Company in the State of Minnesota less than thirty per centum thereof is local within the said State.

213 II.

The defendant Edward T. Young, is the Attorney General of the State of Minnesota, duly elected and acting as such, as provided by the Constitution and laws of said State.

The defendants Ira B. Mills, Charles F. Staples and William E. Young are the members of and constitute the Railroad and Warehouse Commission of the State of Minnesota, duly elected and acting as such as provided by the laws of said State.

Each of the defendants E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud is a person engaged within the State of Minnesota in shipping freight over and receiving freight shipped over the lines of said defendant Railway Company within said State, and uses the facilities of said Company for passenger transportation within said state. Said defend-

ants are hereby designated as representative shippers and passengers. They represent a class of shippers and passengers within said State so numerous that it is impossible to join them all as parties defendant hereto. Such defendants are made parties hereto for the purpose of determining the rights of all shippers and passengers under the Acts and Orders hereinafter set forth.

III.

This is a suit arising under the Constitution of the United States for that your Orator seeks to enjoin said defendant Northern Pacific Railway Company from publishing, or adopting or continuing to observe or keep in force, if the same have been published or adopted, certain rates, tariffs and charges prescribed or set forth in two certain Acts of the Legislature of the State of Minnesota, and two certain Orders of the Railroad & Warehouse Commission of said State hereinafter specifically described, or either thereof, and to enjoin the other defendants herein, and each of thereof, from attempting in any manner to enforce the provisions of said
214 Acts or Orders, or either of thereof or from instituting any action or proceeding against said defendant Railway Company, its officers, directors, agents or employés on account of any violation thereof, or either thereof, for the reason that the said Acts and Orders, and each of them, and all the tariffs, rates, charges, regulations, schedules and classifications therein assumed to be prescribed, and each of them, are violative of the Constitution of the United States. The matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of two thousand dollars.

IV.

Under date of September 6, 1906, the Railroad and Warehouse Commission of the State of Minnesota, assuming to act under and by virtue of the provisions of the statutes of said State, made and published, and thereafter served an order entitled "In the Matter of the Investigation of the reasonableness of the Merchandise and Commodity Tariffs of Rates and Charges between stations in the State of Minnesota, on the Several Lines of Railroad," a copy of which order is hereto annexed Marked "Exhibit 1," and is hereby made a part hereof; and under date the 3rd day of May, 1907, likewise made, published and served an order supplemental to the Order hereinabove described, a copy of which is hereto annexed, marked "Exhibit 2," and is hereby made a part hereof. The tariffs of said defendant Railway Company affected by said Order and the reductions therein made by said Order are shown in Exhibit 3 hereto attached and hereby made a part hereof.

V.

The Legislature of the State of Minnesota, at its session of 1907, passed an Act which was approved on the 18th day of April 1907, and is entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and defining Certain Duties of the Railroad and

Warehouse Commission." A copy of such Act is hereto an-
215 nexed, marked "Exhibit 4," and is hereby made a part hereof. Rates of said defendant Railway Company which will be affected by said Act, and the corresponding rates fixed in said Act, are shown in Exhibit 5 hereto attached and hereby made a part hereof.

VI.

At the same session said Legislature of the State of Minnesota passed an act, which was approved on the 4th day of April, 1907, and is entitled "An Act Prescribing the Maximum Rate to be charged for the Transportation of Passengers upon Railroads within the State of Minnesota, providing for the enforcement of the same, and Penalties for the Violation thereof." A Copy of said Act is hereto annexed, marked "Exhibit 6" and is hereby made a part hereof. Prior to the taking effect of said Act said defendant Railway Company was charging a rate of three cents per mile for passengers over twelve years of age, and one and one-half cents per mile for passengers under twelve years of age.

VII.

Said defendant Northern Pacific Railway Company has published and put into effect and now keeps and maintains in effect the rates prescribed in said Order of September 6, 1906, and in said Act approved April 4, 1907, and threatens to publish and put into effect the rates prescribed in said Order of May 3rd, 1907, and said Act approved April 18, 1907, when said Order and Act shall become respectively effective by virtue of the terms thereof. Said Defendant Edward T. Young, as Attorney General of the State of Minnesota, threatens to take and institute such proceedings against said defendant Railway Company, its officers, agents, servants and employés, as will compel said defendant Railway Company to publish and put into effect the rates prescribed in said Act approved April 18, 1907, in order that said Railway Company may perform its duties
216 to the public as a common carrier, and said defendant Railway Company will, unless enjoined by this Court, publish and put into effect the rates prescribed in said Act.

Said defendants Ira B. Mills, Charles F. Staples, and William E. Young, as the Railroad and Warehouse Commission of the State of Minnesota, threaten to and will, in case said defendant Railway Company shall refuse to put into effect the ratee prescribed by said Order of May 3rd, 1907, or shall refuse to keep and maintain in effect the rates prescribed by said Order of September 6, 1906, take such proceedings against said defendant Company, its officers, agents, servants and employés, as will compel said defendant Railway Company to publish and put into effect or keep and maintain in effect, as the case may be, the rates prescribed in said respective Orders, in order that said defendant Railway Company may perform its duties to the public as a common carrier.

Said Edward T. Young, as Attorney General of the State of Minnesota, in case said defendant Railway Company shall cease to ob-

serve and keep in effect the rates prescribed by said Act of April 4, 1907, threatens to and will take and institute such proceedings against said defendant Railway Company, its officers, agents, servants and employés as will compel said defendant Railway Company to observe and keep in effect the rates prescribed in said Act, in order that said defendant Railway Company may perform its duties to the public as a common carrier.

VIII.

The main line of railroad of said defendant Northern Pacific Railway Company lies through a large grain field situated in the western portion of the State of Minnesota, the State of North Dakota, and the eastern portion of the State of Montana. All the grain shipped from such grain field moves to the head of Lake Superior, that is to say, to Duluth or Superior, or to Minneapolis. Sub-
217 stantially all the coal shipped by said company, in Wisconsin, Minnesota and North Dakota, is shipped from the head of Lake Superior, that is to say from Duluth or Superior, and is delivered at stations upon the line of said company, throughout the States of Minnesota and North Dakota. The cattle, sheep and hogs shipped over the line of said Company are produced in the whole region tributary to said lines in the States of Minnesota, North Dakota and Montana, and are substantially all shipped to St. Paul. The State of Minnesota produces large quantities of lumber. Such lumber is carried by said defendant Company to various points in Minnesota, Wisconsin and North Dakota.

The conditions attending the transportation of wheat are substantially the same, whether the wheat is shipped from Montana or North Dakota stations or from Minnesota stations.

The conditions attending the transportation of the coal above referred to are substantially the same, whether the coal is shipped to Minnesota stations or to North Dakota or Montana stations.

The conditions attending the transportation of live stock are substantially the same, whether the shipment originates in Minnesota, North Dakota or Montana.

The conditions attending the transportation of Minnesota lumber are substantially the same, regardless of whether it is shipped to points within or without the State.

The conditions attending the transportation of merchandise covered by the respective Orders hereinabove described are substantially the same, upon said Railway Company's lines in Wisconsin, Minnesota and North Dakota, whether such transportation be local or interstate; and the merchandise shipped to points in those States is shipped from the same points of origin.

The conditions attending the transportation of passengers are the same in Wisconsin, Minnesota and North Dakota, and for the
218 most part whether such transportation is wholly within the State or interstate.

It is the duty of said Railway Company to serve all localities above mentioned, and all the communities therein, without discrimination. Therefore, in view of its legal obligation not to discriminate, it has

always been the practice of said Railway Company to make its tariffs on merchandise, on grain and other products of the soil, on live stock, on coal, and on lumber in the territory above referred to, and for many years its rates for passenger transportation in the same territory, upon a uniform principle or basis, disregarding State lines. Its respective rates on merchandise, on grain and similar products, on coal, on live stock and on lumber, and during many years for passengers, are and have been the same for similar distances for like shipments within either Wisconsin, Minnesota or North Dakota, and upon interstate shipments within the territory which those States comprise.

Considering the conditions above described your Orator knows of no principle, and is advised that there is no principle under which said Company may lawfully apply, for local shipments in either of said States, a materially lower or different plan, system or scale of tariffs upon passengers, upon merchandise or upon commodities, from thos- applied upon interstate shipments.

The said tariffs of the Company prior to enactment of said respective Acts and the promulgation of said respective Orders, were fair, as between different States, and the local tariffs in such respective States were fair as compared with the Company's interstate tariffs.

The commodities affected by said Act approved April 18, 1907, and upon which rates have been reduced by said Act, are, with the exception of lumber, not shipped in important quantities
219 from one end of said Company's road to the other, and the production and shipment thereof are in two regions, one east of the Rocky Mountains, and the other west of the Rocky Mountains Said Company has, therefore, had two tariffs upon such productions, one in each region of large production and shipment. The rates on such products in the territory west of the Rocky Mountains are, and always have been, higher than the rates in the territory east of the Rocky Mountains. Said Company's rates upon wheat from the Minnesota-North Dakota wheat fields to market are lower than the rates for similar distances in the Mississippi and Missouri Valley States, south of Minnesota and North Dakota. Its rates upon live Stock from the region of production in Minnesota, North Dakota and Montana to market, are substantially the same as rates in said territory South; and its rates upon coal are as low as any rates in the United States where conditions are similar. Its rates on lumber in Minnesota are fair by comparison with neighboring States, and as low as any other lumber rates where the conditions and circumstances are similar.

IX.

Moorhead, Minnesota, is at a distance on the main line of said defendant Company of 249 miles from St. Paul, and Fargo, North Dakota, is upon the same line of said defendant Company, at a distance of 250 miles from St. Paul. The conditions of such respective communities, so far as transportation goes, and so far as competition therein is concerned, are exactly alike.

The rate for transporting a passenger between St. Paul and Fargo,

in either direction, was, prior to the taking effect of said Act approved April 4, 1907, $7.20. The maximum rate prescribed by said Act for transporting a passenger between St. Paul and Moorhead is $4.98. Your orator is advised and believes that if said defendant Company is prohibited from charging more than $4.98 for a passenger between St. Paul and Moorhead, it cannot, without unlawful discrimination, maintain its interstate rate of $7.20 between St. Paul and Fargo. Your orator is advised and believes that such interstate rate of $7.20 between St. Paul and Fargo, was, some time prior to the taking effect of said Act approved April 4, 1907, duly established by said Company pursuant to the provisions of the Interstate Commerce Act, and has, up to the time of the taking effect of said Act and the adoption by said Company of the maximum rates prescribed therein, been maintained and charged by said Company without complaint or objection on the part of anybody interested therein.

220

Your Orator is advised and believes that since the taking effect of such Act approved April 4, 1907, and the adoption by the defendant Company of the maximum rates prescribed therein for its passenger business within the State of Minnesota, such Company has been compelled to reduce and has reduced all its rates for the interstate transportation of passengers out of, into or through the State of Minnesota. Such reduced rates have been and are believed by the officers and directors of said Company to be unreasonably low, and have all been adopted and established by said Company solely because of the necessary and direct effect of said Act and the reduced rates prescribed therein upon rates for such interstate transportation.

For the transportation of a carload of coarse grain from Fargo, North Dakota, to Duluth, Minnesota, the rate now charged by said defendant Company is 11 cents per Cwt. Your Orator is advised and believes that such interstate rate was established by said Company pursuant to the provisions of the Interstate Commerce Act some time prior to the enactment of said Act approved April 18, 1907, and has ever since been maintained and charged by said Company without complaint or objection on the part of anybody interested therein. Under said Act of the Legislature approved April 18, 1907, the maximum rate prescribed from Moorhead to Duluth, for a car load of coarse grain is 8.09 cents per cwt. Your orator is advised and believes that is the said defendant Company is prohibited from charging a higher rate from Moorhead to Duluth than 8.09 cents per cwt. upon a carload of coarse grain, it cannot, without unjust and unlawful discrimination, maintain its interstate rate of 11 cents per cwt. for a car load of coarse grain from Fargo to Duluth.

221

The present rate charged by said company for the transportation of a car load of soft coal from Duluth to Fargo is $2.00 per ton. Your orator is advised and believes that such rate was established by said defendant Company pursuant to the provisions of the Interstate Commerce Act some time prior to the enactment of such Act approved April 18, 1907, and has ever since been maintained

and charged by said Company without complaint or objection on the part of anybody interested therein. Under said Act approved April 18, 1907, the maximum rate prescribed for a carload of soft coal from Duluth to Moorhead is $1.34 per ton. Your orator is advised and believes that if said Company is prohibited from charging a higher rate from Duluth to Moorhead than $1.34 for a ton of soft coal, it cannot, without unjust and unlawful discrimination, maintain its interstate rate of $2.00 for a ton of soft coal from Duluth to Fargo.

The present rate charged by said defendant Company for the transportation of a car load of hard coal from Duluth to Fargo is $2.10 per ton. Your orator is advised and believes that such rate was duly established by said defendant Company pursuant to the provisions of the Interstate Commerce Act some time prior to the enactment of the said Act approved April 18, 1907, and has ever since been maintained and charged by said Company without complaint or objection on the part of anybody interested therein.

222 Under said Act approved April 18, 1907, the maximum rate prescribed for a car load of hard coal from Duluth to Moorhead is $1.68 per ton. Your orator is advised and believes that if the said defendant Company is prohibited from charging a higher rate from Duluth to Moorhead than $1.68 for a ton of hard coal, it cannot, without unjust and unlawful discrimination, maintain its interstate rate of $2.10 for a ton of hard coal from Duluth to Fargo.

Each of these examples your Orator believes to be a fair example of a comparison between its present interstate rates and the reduced rates prescribed by said act.

At the time of the taking effect of the Commission's Order of September 6, 1906, hereinabove described, the rate charged by said defendant Company on a 200 pounds barrel of flour from Minneapolis to Fargo was 69 cents. By the terms of that Order the maximum rate prescribed to be charged by said defendant Company on a 200 pounds barrel of flour from Minneapolis to Moorhead is 54.2 cents. Your orator is advised and believes that said Company's interstate rate of 68 cents from Minneapolis to Fargo had some time prior to the taking effect of said Order been duly established pursuant to the provisions of the Interstate Commerce Act, and had ever since been maintained and charged by said defendant company without complaint or objection on the part of anybody interested therein. Your orator is advised and believes that if the said defendant Company were prohibited from charging a higher rate from Minneapolis to Moorhead than 54.2 cents for a 200 pounds barrel of flour, it could not without unjust and unlawful discrimination maintain its interstate rate of 68 cents for a 200 pounds barrel of flour from Minneapolis to Fargo.

This your orator believes to be a fair example of the interstate rates on merchandise covered by the respective orders of the Commission hereinabove recited, prior to the promulgation thereof, as compared with the reduced rates prescribed by said respective orders.

223 Since the adoption by the defendant Company of the rates prescribed in said Orders and to the end that it might not discriminate unjustly between rates for the transportation of merchandise covered thereby from points in Wisconsin or Minnesota to points in Minnesota and from the same points to points in North Dakota, said Company has been compelled to reduce and it has generally reduced its rates from Superior or from points in Minnesota to points in North Dakota to rates which are fair when compared with the rates prescribed by said Orders. Such reduced rates have been and are believed by the officers and directors of said Company to be unreasonably low and have all been adopted and established by said Company solely because of the necessary and direct effect of said Orders and the reduced rates prescribed therein upon said interstate rates.

X.

Duluth and Superior are each upon the line of said defendant Company, and are situate side by side on Lake Superior, one in Minnesota and the other in Wisconsin. Each receives merchandise and commodities in large quantities by water, and distributes them by rail throughout the State of Minnesota. Their conditions, so far as transportation goes, have been and are substantially similar. They have been and are accorded like rates by said defendant Company and other Railway Companies which afford them transportation facilities. Your Orator known of no principle, and is advised and believes that there is no principle, under which transportation of passengers, merchandise or commodities may be maintained over the lines of said defendant Company to points in Minnesota, at higher rates from Superior than from Duluth. The rates from Superior to points in the State of Minnesota, whether for passengers, merchandise or commodities, had, prior to the promulgation of said respective Orders and the enactment of said respective Acts,
224 been lawfully established by said defendant Company pursuant to the provisions of the Interstate Commerce Act, and had been for some time maintained by said defendant Company without complaint or objection on the part of anybody interested. Such rates were very largely higher than the respective rates established by such respective Acts and Orders from Duluth to points in the State of Minnesota.

The defendant Company has since the adoption by it of the rates prescribed in said respective Orders and in said Act approved April 4, 1907, been compelled to reduce and it has reduced its rates on all merchandise covered by such Orders and its rates on passengers from Superior to points within the State of Minnesota to those prescribed in said Orders and Act from Duluth to points within such State. Such reduced rates have been and are believed by the officers and directors of said Company to be unreasonably low and have all, been adopted and established by said Company solely because of the necessary and direct effect of said Orders and Act and the reduced rates prescribed therein upon rates from Superior to points within the State of Minnesota.

Your orator is advised and believes that the said defendant Company must, if compelled to obey such Act approved April 18, 1907, and in order that it may avoid unjust and unlawful discrimination against Superior in favor of Duluth, lower all its interstate rates upon commodities covered thereby from Superior to points within the State of Minnesota to rates conformable to those assumed to be prescribed by said Act.

For example, the present lawfully established rate charged by said defendant Company for the transportation of lumber in car load lots from Duluth or Superior to Moorhead, Minnesota, is 15½ cents per cwt. and to Detroit, Minnesota, it is 13½ cents per cwt. The maximum rate prescribed in said Act approved April 18, 1907, from Duluth, Minnesota to Moorhead, Minnesota is 11.8 cents per
225 cwt. and from Duluth, Minnesota to Detroit, Minnesota, is 11.1 cents per cwt. Your Orator is advised and believes that if said defendant Company is prohibited from charging more than 11.8 cents per cwt. for the transportation of a car load of lumber from Duluth *ot* Moorhead, or more than 11.1 cents per cwt. from Duluth to Detroit, it cannot, without unjust and unlawful discrimination against Superior, maintain its present interstate rate of 15½ *v*ents per cwt. from Superior to Moorhead, or of 13½ cents per cwt. from Superior to Detroit, Your Orator is advised and believes that this is a fair example of the present interstate rates of said Company as compared with the reduced rates prescribed by said Act.

XI.

A line of railway of said defendant company crosses the line between the States of Minnesota and North Dakota, and enters the State of North Dakota at Fargo, which is 250 miles from St. Paul Another line of Railway of said defendant Company c*o*rsses the line between the States of Minnesota and North Dakota and enters the State of North Dakota at Grand Forks, which is 320 miles from St. Paul. Between the distances of 250 miles and 320 miles from St. Paul the defendant Company has many stations in the State of Minnesota, and many stations in the State of North Dakota, such stations in each State producing the same commodities, i. e. wheat. and other grains, and cattle and other live stock, which are forwarded to the same markets, and consuming substantially the same products, including lumber and coal and merchandise covered by said respective orders, which are brought thereto from the same markets. Such stations also give rise to and are the destination of passenger transportation to a substantially similar extent. The conditions of such stations, whether in North Dakota or in Minnesota, so far as transportation goes, are exactly the same. Your Orator knows of no principle, and is advised that there is no principle upon which the said company can lawfully apply to these stations in North Dakota
226 a materially higher or other scale of rates, whether for passengers or for freight, than it applies to stations within the State of Minnesota.

XII.

The tariffs prescribed by said Act approved April 18, 1907, are constructed upon the principle of a charge for terminal service plus a per mile charge for hauling service, the hauling service charge per mile decreasing materially with oncreasing distance. After a distance is reached of from 200 to 300 miles the tariff is made upon the principle of adding a very small and substantially constant hauling charge for additional distances, which is not large enough to pay the cost of hauling such additional distances. For example, upon lumber the tariff prescribed by said Act allows an increase in charge of only 2 miles per ton mile for distances above 350 miles. The lumber rate so prescribed, if extended to 2,000 miles, would give a maximum rate of 32.9 cents per hundred pounds, or $6.58 per ton, the lawfully established and existing transcontinental rates of said Company for 2,000 miles being now $10.00 per ton on fir lumber, and $12.00 per ton on cedar lumber and shingles. The prescribed rate if extended to 1500 miles would give a maximum charge of 26.9 cents per hundred pounds or $5.38 per ton, the lawfully established and existing rate of said Company for such distance being now $9.00 per ton on fir and pine lumber, and $10.00 per ton on cedar lumber, and on shingles $11.00 per ton.

The rate prescribed by said Act on cattle for 200 miles is 16.3 cents per hundred pounds, and for 300 miles is 18.5 cents and for 400 miles is 20.7 cents. Beyond 200 miles the rate of increase prescribed is .44 cents per ton per mile, which if extended to 600 miles, would give a maximum charge of 25.1 cents per hundred pounds. The present lawfully established and existing rate of said Company upon cattle for 600 miles is 32.2 cents per hundred pounds.

227 On soft coal the rate prescribed by said Act for 300 miles is $1.54 per ton, for 400 miles it is $1.72 per ton. Therefore, the compensation prescribed for hauling the additional distance between 300 and 400 miles is only 18 cents. per ton. This is a wholly unremunerative compensation, and one which will not repay the cost of hauling such additional distance.

The tariff prescribed by said Act on wheat for 300 miles is 10.9 cents per cwt. and for 400 miles it is 12 cents per cwt., thus prescribing a maximum charge of 22 cents per ton for hauling this 100 miles, which is wholly noncompensatory for the cost of hauling that distance. Such rate if extended would produce at 500 miles a rate of 13.1 cents and at 600 miles a rate of 14.2 cents per cwt. Said Company's lawfully established and existing rates for 500 miles and 600 miles are 17½ cents and 20½ cents per cwt. respectively. Your Orator is advised and believes that there is no justification for said company's maintaining a higher schedule of interstate tariffs from the wheat fields of North Dakota and Montana to Market than it maintains locally in Minnesota for the same market, inasmuch as conditions for transportation from said wheat fields are the same whether they are located in Minnesota or North Dakota.

Upon coarse grain the maximum rate prescribed by said Act is for 300 miles 9.6 cents per cwt., and for 400 miles is 10.6 cents per cwt. This prescribes a maximum charge for this 100 mile haul of 20 cents

per ton, which will not pay the cost of hauling this 100 miles. Such rate of increase would give a maximum rate of 17.6 cents per 100 pounds for 1000 miles. Said Company transports to its eastern terminals large quantities of barley produced in Montana. This barley is destined mostly to New York City. The Company's haul is substantially 1000 miles, and its present rate is 35 cents per 100 pounds, which your Orator is advised and believes is a law rate established to enable barley for malt to move from the Gallatin Valley,
228 Montana, to New York in competition with other barley.

Your orator knows of no principle and is advised and believes that there is no principle upon which a rate per ton per mile may be arbitrarily increased with added distance, or upon crossing a line between states, and therefore, your orator is advised and believes that it will be necessary for said Company, if it shall adopt the rates prescribed in said Act, to extend the rates so prescribed as shown in the example hereinabove set forth, to its interstate and long haul business.

The tariffs prescribed by said Order of the Commission of September 6, 1906, are constructed upon a like principle of a charge for terminal service, plus a per mile charge for hauling service, the hauling service charge per mile decreasing materially with increasing distance. Many examples might be stated with regard to the operation of such Order and the rates prescribed thereby, similar to those hereinabove set forth with regard to the operation of said Act approved April 19, 1907, and the rates prescribed thereby. Your orator is advised and believes that it has been necessary and will be necessary for such Company, because of its adopting the rates prescribed in said Order, to extend the rates so prescribed as shown in the examples hereinabove set forth, to its interstate and long haul business.

XIII.

The said Orders of September 6, 1906, and May 3, 1907, and the said Acts of April 4, 1907 and April 18, 1907, and each of them and the reduction of the tariffs and charges of the said defendant Railway Company therein and thereby prescribed, upon the merchandise, passengers and commodities specified therein, respectively, are each of them unjust, unreasonable and confiscatory.

While the immediate effect of said Acts and Orders, if that effect could be confined strictly to the State of Minnesota might leave the defendant Company a fair revenue upon its whole system,
229 still, if the principle upon which the tariffs complained of are made and which is before described be applied to the long haul interstate business of said Company and if the percentage of reduction effected by such Acts and Orders be applied to the local business of said Company in other states (which is already being transacted upon rates fair and equal by comparison with said Company's Minnesota rates in force prior to the promulgation of said Acts and Orders) it would operate to confiscate the property of said Company and your Orator and to deprive it and him of property without due process of law, in violation of the Constitution of the

United States, because such measure of reduction would leave said Company without any net earnings whatever from its property.

XIV.

Although, could the effect of said respective Acts and Orders, and each of them, be confined strictly to the traffic of the defendant Company wholly within the State of Minnesota, said Company might be left with a fair income as regards its whole system, still each of said acts and Orders does operate and will operate necessarily and directly upon the interstate commerce of said Company, and they are and each of them is a regulation of such commerce, in violation of the exclusive power granted to Congress by the Constitution of the United States, Furthermore, if the necessary effect of said Acts and Orders, and each of them, will be to compel said Company to reduce its interstate rates to conformity with the rates prescribed thereby, as hereinabove described and illustrated, the result will be that said Company and your Orator will be deprived of its and his property without due process of law, in violation of the Constitution of the United States, because the maintenance of such State rates are such interstate rates, as so reduced, would not afford said Company any reasonable, just or fair net earnings from its property.

230 XV.

If the States of Wisconsin, North Dakota, Montana Idaho, Washington and Oregon, through which the main line of said defendant Railway Company passes, should each of them establish rates like those established by said respective Acts and Orders, the result would be that the Interstate rate which might be charged by said Railway Company for transportation of passengers or freight, as the case might be, could not lawfully, or practically be greater than the sum of the respective local rates, and therefore such interstate rates would be wholly and necessarily established by such respective States, and not by the United States.

XVI.

During the month of June 1906, there was sold by said Railway Company between St. Paul and Moorhead in both directions 37 one way full passenger tickets and between St. Paul and Fargo 290 such tickets. In June 1907, the second month of the operation of the Act approved April 4, 1907, there were sold between Minneapolis and Moorhead in both directions 68 one way full tickets, and between Minneapolis and Fargo 482 such tickets, and in June 1907, there were sold between Minneapolis and Fargo 12 such tickets and between Minneapolis and Moorhead 1,920 such tickets. In May and June, 1906, there was only one cash fare collected on a train between St. Paul or Minneapolis and Moorhead, and in these two months in 1907 there were collected 1,260 such fares. Your orator is advised and believes that these figures show that the maintenance of its interstate charges of three cents per mile between St. Paul and Minneapolis and Fargo and on the two cents per mile rate prescribed by

said Act approved April 4, 1907, between St. Paul and Minneapolis and Moorhead, resulted directly and necessarily in the loss to said Company of its interstate business between St. Paul or Minneapolis and points outside of the State of Minnesota, to the amount
231 of the difference between the number of passenger tickets and cash fares sold or taken between St. Paul or Minneapolis and Moorhead in June 1906, and such tickets or cash fares in June 1907 Your orator believes that this is a fair example of the operation of said Act upon the interstate business of said Company.

XVII.

The roads of said Railway Company are well and judiciously located, were built in obedience to public necessity and are properly equipped and built, having reference to the business of the country and that reasonably to be expected, and are well and economically operated. Its property represents an actual and fair value of not less than $350,000,000, and it could not, as your Orator is advised and believes, be reproduced for that sum.

XVII-.

The said respective Acts of April 4, 1907, and April 18, 1907, and said respective Orders, and each of them, are, in the penalties prescribed for their violation, so drastic that no owner or operator of railway property can invoke the jurisdiction of any Court to test the validity thereof except at the risk of confiscation of such property, or the imprisonment for long terms in jails and penitentiaries of its officers, agents and employees, or both, of the Company owning such property, and for that reason said Acts of April 4, 1907, and April 18, 1907, and said respective Orders and each of them deny to the defendant Railway Company, and its stockholders, including your Orator, equal protection of the laws, and deprives it and them of their property without due process of law, and are, and each of them is for that reason unconstitutional and void.

XIX.

Your orator is now, and for more than two years last past continuously has been a shareholder in said Northern Pacific
232 Railway Company, owning over two hundred shares therein, which are worth and are of the reasonable value of more than One Hundred Dollars per share. He brings this bill in his own behalf and in behalf of all other stockholders in said Railway Company similarly situated, who may join therein. Prior to the institution of this Suit and after the passage of said Acts your Orator, together with Charles E. Perkins, formerly one of the parties complainant in this suit and now deceased, demanded of the President and managing directors of said Northern Pacific Railway Company that they cease obedience to said Order of said Commission and that they refise obedience to said respective Acts and each of them, and that the rates prescribed therein should not be put into effect, and that said corporation, its officers and directors institute proper suit

or suits to prevent said rates from continuing or becoming effective, as the case might be and to have the same declared illegal; that the said corporation, its President and Directors have positively declined and refused to comply with said demand in any respect whatsoever. This suit is not in any manner or to any extent a collusive one to confer on the Court of the United States jurisdiction of a case of which it could not otherwise have cognizance.

233 XX.

Every freight shipment which said Orders or said Act of April 18, 1907, seek to affect, and every passenger carried by said Railway Company may, if said Railway Company shall fail to continue to observe and keep in force or to observe and put in force the same, as the case may be, result in an action against said company or a criminal proceeding against its officers, directors, agents or employés; and it will result in an endless number of actions at law and criminal proceedings.

If said Railway Company, its officers, directors, agents and employés shall cease obedience to the said Order of the said Railroad and Warehouse Commission of September 6, 1906, or shall refuse obedience to said Order of May 3, 1907, said commission and said Edward T. Young, as Attorney General of the State of Minnesota, in behalf of said commission, will, as your orator is advised and believes, institute proceedings by mandamus, or otherwise, against said Railway Company, its officers, directors, agents or employés, to enforce said Orders and all the provisions thereof, and threaten to and will take other proceedings against said company, its officers, directors, agents and employés, to the same end and for the same purpose.

If said Railway Company, its officers, directors, agents and employés shall fail or refuse to keep in force the tariff prescribed by the said Act of April 4, 1907, or fail or refuse to put in force
234 and effect the tariffs prescribed by said Act of April 18, 1907, said defendant Edward T. Young will, as your orator is advised and believes, institute mandamus or other proceedings for the purpose of enforcing said Acts, and each thereof, and the provisions and penalties thereof.

In consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of the common law, and can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, your orator prays that said Acts of the legislature of the State of Minnesota, and each of them, and said Orders of said Railroad and Warehouse Commission, and each of them, be declared to be in violation of the Constitution of the United States, and therefore void and of no effect, so far as the said Northern Pacific Railway Company, its officers, directors, agents and employés, are concerned, and that said Northern Pacific Railway Company, its officers, directors, agents and employés, be temporarily and permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by said Order of September 6, 1906,

or the passenger rate set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs set forth in said Act of April 18, 1907, or those set forth in said Order of May 3, 1907, or from reducing its tariffs to the figures set forth in said last named Act, or said last named Order.

That the said Edward T. Young, as Attorney General of
235 the State of Minnesota, and Ira B. Mills, Charles F. Staples and William E. Young, as the Railroad and Warehouse Commission of the State of Minnesota, be temporarily and permanently restrained and enjoined from any attempt to compel said Railway Company to observe, publish, post, or put in force said rates, or any of them, as fixed by said Order of September 6, 1906, or said Order of May 3, 1907, and further be temporarily and permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés, to enforce any penalties or remedies for the violation by said Railway Company of said Orders of either of them.

That said Edward T. Young, as Attorney General, be temporarily and permanently enjoined and restrained from taking any action, step or proceeding against said Railway Company, its officers, agents or employés, to enforce the penalties and remedies specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

And that the defendants, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, and other shippers affected by this proceeding, be temporarily and permanently enjoined and restrained from instituting any action for the violation of said Orders or Acts, or either of them, or from demanding that any of the rates contained therein, or either of them, be given to said shippers, or any of them; and that your orators may have such other and further relief as may be
236 just and equitable.

And may it please your honors, to grant unto your orator a writ of subpœna out of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Northern Pacific Railway Company, Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud, commanding them, and each of them, on a day certain therein to be named, and under a certain penalty, to be and appear before this honorable court, then and there to answer, but not under oath (answer under oath being expressly waived) all and singular the premises, and to stand to and perform and abide by such order, direction and decree as may be made against them in the premises; and that, pending the final hearing of this cause, a temporary restraining order may be issued as above prayed, and your orators will ever pray, etc.

DAVID C. SHEPARD,
By JARED HOW, Their *Solicitor.*

HOW, BUTLER & MITCHELL,
EDWARD S. ROBERT,
Solicitors for Complainants.

237 STATE OF MINNESOTA,
County of Ramsey, ss:

I, David C. Shepard, upon oath, say that I am one of the complainants in the above entitled bill, which I have read. I know the contents thereof, and the same are true of my own knowledge, except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

DAVID C. SHEPARD.

Subscribed and sworn to before me this 20th day of April, 1908.

[SEAL.] J. H. NEEDHAM,
Notary Public, Ramsey County, Minn.

My commission expires April 8, 1915.

EXHIBIT I.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Investigation of the Reasonableness of the Merchandise and Commodity Tariffs of Rates and Charges Between Stations in the State of Minnesota on the Several Lines of Railroad.

In the above entitled matter, the Commission having hear- the evidence, finds as facts in relation to the merchandise rates on the line of the Northern Pacific Railway Company

238 First. That the Northern Pacific Railway Company is a corporation, organized and incorporated under the laws of the State of Wisconsin, and is operating a railroad through various parts of the State of Minnesota, and carries freight and passengers for hire.

Second. That the terminal and distance freight rates on merchandise now charged by the Northern Pacific Railway Company on classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E," as shown by the so-called "Western Classification," between stations in the State of Minnesota, are unreasonable.

Third. That the merchandise rates on classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E," as shown in exhibit "A," hereto attached and made a part of this order (according to said Western Classification, with exceptions and changes made by the Minnesota Commission), are reasonable maximum rates between all stations on the line of the Northern Pacific Railway Company in the State of Minnesota, and what are known as terminal or distributing stations on said railway in said state, and that a rate five cents higher than the rate shown in exhibit "A" is a reasonable maximum rate between stations on the line of said railway in this state, neither of which is a terminal or distributing station.

It is therefore ordered, that the reasonable maximum rates on said

classes 1, 2, 3, 4, 5, "A," "B," "C," "D" and "E" are reduced
239 and fixed at the rates shown in said exhibit "A" between all stations on the line of said railway in the State of Minnesota, and what are now known as terminal and distributing stations on said railway in said state, to-wit: Minneapolis, St. Paul, Duluth, Stillwater, St. Cloud, Brainerd, Fergus Falls, Moorhead, Crookston, Sauk Center, Detroit, and such other stations as may hereafter be made terminal or distributing stations, and the Northern Pacific Railway Company is hereby forbidden to charge any higher rate than that named in said exhibit "A." This order does not prevent the charging of a lower rate than that provided by exhibit "A," but in case a less rate is charged on one class, all classes must be reduced so as to preserve the relative relations between classes fixed in exhibit "A."

Until the further order of the Commission, said Railway Company may charge a rate five per cent. more than shown in exhibit "A" for shipments between stations, neither of which is a terminal or distributing station.

This order shall be in force thirty days after its service.

Dated St. Paul, Minn., September 6th, 1906.

By the Commission,

A. O. CLAUSEN, *Secretary.*

240 *Note.*

1. The matter of joint rates will be the subject of a future order when the necessity for the same is presented.

2. When issuing a schedule of rates, the fraction of a cent, 1 to 24 one-hundredths may be dropped; 25 to 75 one-hundredths may be called one-half cent, and 76 to 99 one-hundredths may be called one cent.

3. In case the Railway Company, in putting in a new schedule of rates, fails to so adjust the "in" rates as to protect the jobbers at the distributing stations other than St. Paul, Minneapolis and Duluth, the Commission will undertake to make the necessary adjustment.

ST. PAUL, MINNESOTA, *September* 7, 1906.

Railroad and Warehouse Commission of Minnesota.

Schedule of Reasonable Maximum Terminal and Distributing Merchandise Rates.

When rates for exact distance are not shown, the rates for the next greater distance as shown on Tariff may govern.

Governed by Western Classification, with exceptions and changes made by the Railroad and Warehouse Commission of Minnesota.

Inter-station Distance rates (other than terminal or Distributing Rates) can be made based on 5% above the rates shown in this schedule.

When preparing a schedule of rates the fraction of a mill, 1 to 5/10ths may be dropped; 6 to 9/10th- may be called one mill.

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Rates for—	MERCHANDISE. In cents per 100 lbs. Percentage scale relation.				SPECIAL CARLOAD CLASSES. In cents per 100 lbs.					
	100%	83⅓%	66⅔%	50%	40%	45%	35%	30%	25%	20%
	1	2	3	4	Fifth class.	A	B	C	D	E
5 miles	12.00	10.00	8.00	6.00	4.80	5.40	4.20	3.60	3.00	2.40
10 miles	12.98	10.82	8.65	6.49	5.19	5.84	4.55	3.89	3.25	2.60
15 miles	13.96	11.63	9.31	6.98	5.58	6.28	4.89	4.19	3.49	2.80
20 miles	14.94	12.45	9.96	7.47	5.98	6.72	5.23	4.48	3.74	2.99
25 miles	15.92	13.27	10.61	7.96	6.37	7.16	5.57	4.78	3.98	3.18
30 miles	16.90	14.08	11.27	8.45	6.76	7.61	5.92	5.07	4.23	3.38
35 miles	17.88	14.90	11.92	8.94	7.15	8.05	6.26	5.36	4.47	3.58

Rates for—	MERCHANDISE. In cents per 100 lbs.				SPECIAL CARLOAD CLASSES. In cents per 100 lbs.					
	Percentage scale relation.									
	100% 1	83⅓% 2	66⅔% 3	50% 4	40% Fifth class.	45% A	35% B	30% C	25% D	20% E
40 miles	18.86	15.72	12.57	9.43	7.54	8.49	6.70	5.66	4.72	3.77
45 miles	19.84	16.53	13.22	9.92	7.94	8.93	6.94	5.95	4.96	3.97
50 miles	20.82	17.35	13.88	10.41	8.33	9.37	7.29	6.25	5.21	4.16
243										
55 miles	21.80	18.17	14.53	10.90	8.72	9.81	7.63	6.54	5.45	4.36
60 miles	22.78	18.98	15.19	11.39	9.11	10.25	7.97	6.83	5.70	4.56
65 miles	23.76	19.80	15.84	11.88	9.50	10.69	8.32	7.13	5.94	4.75
70 miles	24.74	20.62	16.49	12.37	9.90	11.13	8.66	7.42	6.19	4.95
75 miles	25.72	21.43	17.14	12.86	10.29	11.58	9.01	7.72	6.43	5.14
80 miles	26.70	22.25	17.80	13.35	10.68	12.02	9.35	8.01	6.68	5.34
85 miles	27.68	23.07	18.45	13.84	11.07	12.46	9.69	8.30	6.92	5.54
90 miles	28.66	23.88	19.10	14.33	11.46	12.90	10.03	8.60	7.17	5.73
95 miles	29.64	24.70	19.76	14.82	11.86	13.34	10.37	8.89	7.41	5.93
100 miles	30.62	25.52	20.41	15.31	12.25	13.78	10.72	9.19	7.66	6.12
105 miles	31.60	26.33	21.06	15.80	12.64	14.22	11.06	9.47	7.90	6.32
110 miles	32.58	27.16	21.72	16.29	13.03	14.66	11.40	9.77	8.15	6.52
115 miles	33.56	27.97	22.37	16.78	13.42	15.10	11.75	10.07	8.39	6.71
120 miles	34.54	28.78	23.02	17.27	13.82	15.54	12.09	10.36	8.64	6.91
125 miles	35.52	29.60	23.68	17.76	14.21	15.98	12.43	10.66	8.88	7.10
130 miles	36.50	30.42	24.33	18.25	14.60	16.43	12.78	10.95	9.13	7.30
135 miles	37.48	31.23	24.98	18.74	14.99	16.87	13.12	11.24	9.37	7.50
140 miles	38.46	32.05	25.64	19.23	15.38	17.31	13.46	11.54	9.62	7.69
145 miles	39.44	32.87	26.29	19.72	15.78	17.75	13.80	11.83	9.86	7.89

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150 miles	40.42	33.68	26.94	20.21	16.17	18.19	14.15	12.13	10.11	8.08
155 miles	41.40	34.50	27.60	20.70	16.56	18.63	14.49	12.42	10.35	8.28
160 miles	42.38	35.32	28.25	21.19	16.95	19.07	14.83	12.71	10.60	8.48
165 miles	43.36	36.13	28.90	21.68	17.34	19.51	15.18	13.01	10.84	8.67
170 miles	44.34	36.95	29.56	22.17	17.74	19.95	15.52	13.30	11.09	8.87
175 miles	45.32	37.77	30.21	22.66	18.13	20.39	15.86	13.60	11.33	9.06
180 miles	46.30	38.58	30.86	23.15	18.52	20.84	16.21	13.89	11.58	9.26
185 miles	47.28	39.40	31.52	23.64	18.91	21.28	16.55	14.18	11.82	9.46
190 miles	48.26	40.22	32.17	24.13	19.30	21.72	16.89	14.48	12.07	9.65
195 miles	49.24	41.03	32.82	24.62	19.70	22.16	17.23	14.77	12.31	9.85
200 miles	50.22	41.85	33.48	25.11	20.09	22.60	17.58	15.07	12.56	10.00
210 miles	51.20	42.66	34.13	25.60	20.48	23.04	17.92	15.36	12.80	10.24
220 miles	52.18	43.48	34.78	26.09	20.87	23.48	18.26	15.65	13.05	10.43
230 miles	53.16	44.30	35.44	26.58	21.26	23.92	18.61	15.95	13.29	10.63
240 miles	54.14	45.11	36.09	27.07	21.66	24.36	18.95	16.24	13.54	10.83
250 miles	55.12	45.93	36.74	27.56	22.05	24.80	19.29	16.54	13.78	11.00
260 miles	56.10	46.75	37.40	28.05	22.40	25.25	19.64	16.83	14.03	11.22
270 miles	57.08	47.56	38.05	28.54	22.83	25.69	19.98	17.12	14.27	11.42
280 miles	58.06	48.38	38.70	29.03	23.22	26.13	20.32	17.41	14.52	11.62

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290 miles	59.04	49.20	39.36	29.52	23.62	26.57	20.66	17.71	14.76	11.80
300 miles	60.02	50.01	40.01	30.01	24.01	27.01	21.01	18.01	15.01	12.00
310 miles	61.00	50.83	40.66	30.50	24.40	27.45	21.35	18.30	15.25	12.20
320 miles	61.98	51.65	41.32	30.99	24.79	27.89	21.69	18.59	15.50	12.40
330 miles	62.96	52.46	41.97	31.48	25.18	28.35	22.04	18.89	15.74	12.59
340 miles	63.94	53.28	42.62	31.97	25.58	28.77	22.37	19.18	15.99	12.79
350 miles	64.92	54.10	43.28	32.46	25.97	29.21	22.72	19.48	16.23	12.98

Rates for—	MERCHANDISE, In cents per 11 lbs.	SPECIAL CARLOAD CLASSES. In cents per 100 lbs.								
	Percentage scale relation.									
	100%	83⅓%	66⅔%	50%	40%	45%	35%	30%	25%	20%
	1	2	3	4	Fifth class.	A	B	C	D	E
360 miles	65.90	54.91	43.93	32.95	26.36	29.66	23.07	19.78	16.48	13.18
370 miles	66.88	55.73	44.58	33.44	26.75	30.10	23.41	20.06	16.72	13.38
380 miles	67.86	56.55	45.24	33.93	27.14	30.54	23.75	20.36	16.97	13.57
390 miles	68.84	57.36	45.89	34.42	27.54	30.98	24.19	20.65	17.21	13.77
400 miles	69.82	58.18	46.54	34.91	27.93	31.32	24.44	20.95	17.46	13.96
420 miles	70.80	59.00	47.20	35.40	28.32	31.86	24.78	21.24	17.70	14.16
440 miles	71.78	59.81	47.85	35.89	28.71	32.39	25.12	21.53	17.94	14.36
460 miles	72.76	60.63	48.50	36.38	29.10	32.74	25.47	21.83	18.19	14.55
480 miles	73.74	61.45	49.15	36.87	29.50	33.18	25.81	22.12	18.44	14.75
500 miles	74.72	62.26	49.32	37.36	29.89	33.62	26.15	22.42	18.68	14.94

246 EXHIBIT 2.

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Commodity Rates to Distributing Centers Hereinafter Named on the Line of the Northern Pacific Railway.

This matter having come before the Commission, and the evidence therein having been taken and concluded on the 2nd day of May, 1907, the Commission finds that the following named places, all in the State of Minnesota, having heretofore enjoyed distributing rates, are entitled to be known as distributing centers or terminals, viz.:

East Grand Forks,
Fergus Falls,
Brainerd,
Sauk Center,
Crookston,
Breckenridge,
Detroit,
Saint Cloud,
Moorhead.

And that the rates named in "Exhibit C," hereto annexed, are reasonable maximum rates in carload lots from the terminals of St. Paul, Minneapolis and Minnesota Transfer and Duluth to said distributing centers on the freight articles mentioned in said exhibit, and that the regulations and minimums marked upon said exhibit are reasonable minimums and regulations in regard to such rates.

It is therefore ordered, that the rates between St. Paul, Minneapolis and Minnesota Transfer and Duluth and said distributing points above named, over the Northern Pacific Railway, are
247 hereby fixed as in "Exhibit C;" and said Railway Company is hereby forbidden to charge any higher or greater rates than the rates above named on the commodities named in "Exhibit C."

This order shall take effect on the 3rd day of June, 1907.

By the Commission,

A. C. CLAUSEN, *Secretary.*

Dated St. Paul, Minn., May 3rd, 1907.

"EXHIBIT C."

Referred to in the Commissioners' Order.

Railroad and Warehouse Commission Schedule of Reasonable Carload Commodity Rates.

ST. PAUL, MINN., *May 3rd*, 1907.

Commodities.

Cider and Vinegar, straight or mixed C. L., minimum weight 30,000 pounds.

Pickles, Kraut, Cucumber, Tomato, Cauliflower and Onion, also

Vinegar, in tin cans, boxed or crated, in glass or stone, boxed or in barrels, kegs, kits, pails or tubs; also Table Sauces, including Catsup, Horseradish, prepared, Mustard prepared, Pepper Sauce and Salad Dressing, in glass, boxed; in tin cans, boxed or crated, or in bulk in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

248 Condensed Milk and Evaporated Cream, in glass, boxed, in cans, jacketed, boxed or crated, or in barrels, straight or mixed C. L., minimum weight 30,000 pounds.

Fruits, Vegetables, Cove Oysters and Catsup, in tin cans, boxed or crated, or in glass or stone jars, boxed, straight or mixed C. L., minimum weight 30,000 pounds.

Paper—Building, Roof and Wrapping, in bundles, rolls, boxes or crates; also Paper Bags in bundles, straight or mixed C. L., minimum weight 30,000 pounds.

Sugar (not Maple), C. L., minimum weight 30,000 pounds.

Syrup, Glucose, Jelly, Molasses, Preserves and Fruit Butter, in wood, in tin cans, boxed or crated, or in glass or jugs, boxed; C. L., minimum weight 30,000 pounds.

Coffee, green or roasted, in bags, barrels or drums, also in packages, tin cans or pails, crated or boxed, in straight or mixed C. L., minimum weight 24,000 pounds.

Rice, in bags or in packages, boxed; Straight or mixed C. L., minimum weight 30,000 pounds.

Beans, dry, in bags, C. L., minimum weight 30,000 pounds.

Canned Sardines, in tin cans, boxed or crated, C. L., minimum weight 30,000 pounds.

249 "EXHIBIT C"—Continued.

Referred to in Commissioners' Order.

Reasonable Maximum Carload Commodity Rates Over the Lines of the Northern Pacific Railway Company on the Commodities Named in this Exhibit from St. Paul, Minneapolis and Minnesota Transfer.

To	Rates in cents per 100 pounds.	From Duluth.
East Grand Forks	21.40	21.79
Crookston	20.62	
Thief River Falls	22.58	
Fergus Falls	15.52	
Breckenridge	17.48	
Moorhead	18.66	
Sauk Center	10.82	
St. Cloud	6.50	

Exhibit 8.

Comparison of Terminal Rates at Important Points.

Station.		Classes In cents per 100 lbs. 1	2	3	4	5	A	B	C	D	E
Anoka	27 miles	15	13	10	8	6	6	5	5	4	3
		14.9	12.4	10.	7.5	6.	6.7	5.2	4.5	3.7	3.
Elk River	39 miles	21	18	14	11	8	8	7	6	5	4
		16.9	14.1	11.3	8.4	6.8	7.6	5.9	5.1	4.2	3.4
Becker	56 miles	30	26	20	15	12	12	11	9	7	6
		20.8	17.3	13.9	10.4	8.3	9.4	7.3	6.2	5.2	4.2
St. Cloud	74 miles	34	29	22	17	14	14	12	10	8	7
		23.8	19.8	15.8	11.9	9.5	10.7	8.3	7.1	5.9	4.7
Little Falls	106 miles	41	35	27	21	16	16	14	12	10	8
		30.6	25.5	20.4	15.3	12.2	13.8	10.7	9.2	7.7	6.1
Staples	140 miles	47	40	31	24	19	19	16	14	11	9
		36.5	30.4	24.3	18.2	14.6	16.4	12.8	11.	9.1	7.3
Wadena	158 miles	50	43	33	25	20	20	18	15	12	10
		40.4	33.7	26.9	20.2	16.2	18.2	14.1	12.1	10.1	8.1
Perham	181 miles	55	47	36	28	22	22	19	17	13	11
		45.3	37.8	30.2	22.7	18.1	20.4	15.9	13.6	11.3	9.1
Detroit	202 miles	59	50	39	30	24	24	21	18	14	12
		49.2	41.	32.8	24.6	19.7	22.2	17.2	14.8	12.3	9.8
Winnipeg Junction	223 miles	63	54	42	32	25	25	22	19	15	13
		52.2	43.5	34.8	26.1	20.9	23.5	18.3	15.6	13.	10.4
Twin Valley	248 miles	67	57	44	34	27	27	23	20	16	13
		54.1	45.1	36.1	27.1	21.7	24.4	18.9	16.2	13.5	10.8
Crookston	291 miles	67	57	44	34	27	27	23	20	16	13
		59.	49.2	39.4	29.5	23.6	26.6	20.7	17.7	14.8	11.8
East Grand Forks	318 miles	67	57	44	37	27	27	23	20	16	13
		61.	50.8	40.7	30.5	24.4	27.	21.3	18.3	15.2	12.2

Large type figures show former rates.
Small type figures show present rates which are those of the Minnesota Railway Commission.

EXHIBIT 3.—Continued.

Comparison of Minnesota Distance Tariff Rates.

Distance.	Classes In cents per 100 lbs. 1	2	3	4	5	A	B	C	D	E
25 miles	19	16	13	10	8	8	7	6	5	4
	16.7	13.9	11.1	8.4	6.7	7.5	5.8	5.	4.2	3.3
50 miles	31	26	20	16	12	12	11	9	7	6
	21.9	18.2	14.6	10.9	8.7	9.8	7.6	6.6	5.5	4.4
75 miles	38	32	25	19	15	15	13	11	9	8
	27.	22.5	18.	13.5	10.8	12.2	9.5	8.1	6.7	5.4
100 miles	43	37	28	22	17	17	15	13	10	9
	32.1	26.8	21.4	16.1	12.9	14.5	11.2	9.6	8.	6.4
125 miles	48	41	32	24	19	19	17	14	12	10
	37.3	31.1	24.9	18.6	14.9	16.8	13.	11.2	9.3	7.4
150 miles	53	45	35	27	21	21	19	16	13	11
	42.4	35.4	28.3	21.2	17.	19.1	14.9	12.7	10.6	8.5
175 miles	58	49	38	29	23	23	20	17	14	12
	47.6	39.7	31.7	23.8	19.	21.4	16.6	14.3	11.9	9.5
200 miles	63	54	42	32	25	25	22	19	15	13
	52.7	43.9	35.1	26.4	21.1	23.7	18.5	15.8	13.2	10.5
220 miles	67	57	44	34	27	27	23	20	16	13
	54.8	45.6	36.5	27.4	21.9	24.6	19.2	16.4	13.7	10.9
240 miles	71	60	47	36	28	28	25	21	17	14
	56.8	47.4	37.9	28.4	22.7	25.6	19.9	17.	14.2	11.4
260 miles	75	64	50	38	30	30	26	23	18	15
	58.9	49.1	39.3	29.4	23.5	26.5	20.6	17.7	14.7	11.8
280 miles	79	67	52	40	32	32	28	24	19	16
	61.	50.8	40.6	30.5	24.4	27.4	21.3	18.3	15.2	12.2
300 miles	83	71	55	42	33	33	29	25	20	17
	63.	52.5	42.	31.5	25.2	28.4	22.1	18.9	15.8	12.6

Large type figures show former rates.
Small type figures show present rates which are those of the Minnesota Railway Commission.

252 EXHIBIT 4.

H. F. 1190. Chap. 232.

An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission.

Be It Enacted by the Legislature of the State of Minnesota:

SECTION 1. For the purposes of this act the commodities hereinafter named are classified as follows: Wheat, flax seed, broom corn seed, hemp seed, millet seed, popcorn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, and all uncooked grain or cereal products manufactured from wheat, shall constitute class eleven (11); corn, oats, rye, barley, alfalfa feed, alfalfa meal, bran, brewers' grits, brewers' meal, brewers' refuse (dry), chopped feed, other than wheat chops, corn flour, corn meal, cotton seed cake, cotton seed hulls, cotton seed meal, gluten feed, gluten meal, grain screenings, hominy feed, kafir corn, linseed cake, linseed meal, middlings, shorts, sorghum seed, speltz, wild mustard seed, oat groats, rolled oats, oat dust, oat hulls, oat meal, rolled rye, rye flour, malt, pearl barley and all uncooked grain or cereal products manufactured from corn, oats or rye, shall constitute class twelve (12); lumber, lath, shingles, sash, doors and blinds shall constitute class thirteen (13); sheep (when carried in double-decked cars) and cattle shall constitute class fourteen
253 (14); sheep (when carried in single decked cars) and hogs shall constitute class fifteen (15); hard coal shall constitute class sixteen (16); soft coal shall constitute class seventeen (17).

SECTION 2. The following are hereby established and declared to be the reasonable maximum rates to be charged by Railroad Companies as common carrie-s of property in the State of Minnesota, for the transportation, in car load lots, of the commodities belonging to the clas-es named in section one (1) of this act, between stations in the State of Minnesota for the distances named in the following schedules, to-wit:

Distance in miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs.	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars & cents per ton.	Rates for commodities in classification No. 17 in dollars & cents per ton.
5	2.7	2.7	2.7	4.4	4.9	.54	.44
10	3.3	2.8	3.3	5.	5.5	.62	.49
15	3.8	3.4	3.8	5.5	6.3	.63	.51
20	4.4	3.8	4.4	6.3	6.8	.65	.52
25	4.6	4.	5.4	6.7	7.6	.69	.54
30	4.8	4.2	5.6	7.4	8.3	.70	.57
35	5.	4.5	5.8	7.9	9.	.72	.58
40	5.2	4.6	6.	8.6	9.7	.74	.59
45	5.4	4.8	6.3	9.2	10.3	.75	.61
50	5.7	5.	6.5	9.8	11.	.77	.62
55	5.9	5.1	6.8	10.	11.3	.81	.64
254							
60	6.1	5.3	7.0	10.2	11.5	.83	.65
65	6.3	5.5	7.4	10.5	11.8	.85	.69
70	6.5	5.8	7.5	10.7	12.	.87	.70
75	6.7	6.	7.7	10.9	12.3	.89	.72
80	7.	6.2	8.1	11.1	12.5	.93	.74
85	7.2	6.3	8.3	11.3	12.7	.95	.75
90	7.4	6.5	8.5	11.5	13.	.97	.77
95	7.6	6.7	8.7	11.8	13.3	.99	.80
100	7.8	7.	9.	12.	13.5	1.01	.82
105	7.9	7.	9.2	12.2	13.7	1.04	.83
110	8.1	7.	9.3	12.4	13.9	1.06	.84
115	8.2	7.2	9.4	12.6	14.3	1.07	.85
120	8.2	7.2	9.4	12.8	14.5	1.08	.86
125	8.3	7.3	9.5	13.	14.7	1.10	.87
130	8.4	7.4	9.6	13.3	14.9	1.11	.88
135	8.5	7.4	9.8	13.5	15.3	1.12	.92
140	8.5	7.5	9.8	13.7	15.5	1.16	.93
145	8.6	7.6	9.9	13.9	15.7	1.17	.94
150	8.7	7.6	10.	14.2	15.9	1.19	.95
155	8.8	7.7	10.1	14.4	16.2	1.20	.96
160	8.8	7.8	10.1	14.6	16.4	1.22	.98
165	9.	7.9	10.4	14.8	16.7	1.24	1.00
170	9.	7.9	10.4	15.	16.9	1.29	1.01
175	9.1	8.1	10.6	15.3	17.2	1.31	1.05
180	9.1	8.1	10.6	15.5	17.4	1.33	1.07
185	9.3	8.2	10.7	15.7	17.6	1.35	1.09
190	9.4	8.3	10.8	15.9	17.9	1.37	1.10
195	9.5	8.3	10.9	16.1	18.2	1.42	1.12
200	9.6	8.4	11.	16.3	18.4	1.44	1.16

Distance in miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs.	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars & cents per ton.	Rates for commodities in classification No. 17 in dollars & cents per ton.
210	9.7	8.5	11.1	16.6	18.6	1.48	1.19
220	9.8	8.6	11.2	16.8	18.8	1.54	1.22
230	9.9	8.7	11.4	17.	19.1	1.58	1.28
255							
240	10.	8.8	11.6	17.2	19.4	1.63	1.31
250	10.2	8.9	11.8	17.4	19.6	1.68	1.34
260	10.3	9.1	11.9	17.6	19.8	1.72	1.37
270	10.5	9.3	12.	17.9	20.2	1.78	1.42
280	10.6	9.4	12.2	18.1	20.4	1.82	1.46
290	10.8	9.5	12.4	18.3	20.6	1.87	1.49
300	10.9	9.6	12.5	18.5	20.8	1.92	1.54
310	11.	9.7	12.6	18.7	21.1	1.94	1.56
320	11.1	9.8	12.8	19.	21.4	1.96	1.57
330	11.2	9.9	12.9	19.2	21.6	1.99	1.59
340	11.3	9.9	13.1	19.4	21.8	2.02	1.60
350	11.4	10.	13.2	19.6	22.1	2.04	1.63
360	11.5	10.1	13.3	19.8	22.3	2.06	1.66
370	11.7	10.2	13.4	20.	22.6	2.08	1.67
380	11.8	10.3	13.5	20.3	22.8	2.11	1.69
390	11.9	10.5	13.6	20.5	23.1	2.13	1.70
400	12.	10.6	13.7	20.7	23.3	2.16	1.72

SECTION 3. When the exact distance which a commodity is transported is not given in the foregoing schedule, the carrier may charge the rate specified in the said schedule for the next greater distance. In order to constitute a car load, within the meaning of this act, the weight of the commodity in any one car shall be at least as follows: Class eleven (11) and class twelve (12), twenty-four thousand (24,000) pounds; class thirteen (13), twenty thousand (20,000) pounds; class fourteen (14), nineteen thousand (19,000) pounds; class fifteen (15), fifteen thousand (15,000) pounds; clas-es sixteen (16) and seventeen (17), thirty thousand (30,000) pounds.

256 SECTION 4. No Railroad Company, which is a common carrier of property within the State of Minnesota, shall charge, take or receive any greater sum for carrying within this state, between stations therein, any of the commodities named in this act than the respective amounts set forth and provided for in section two of this act for the respective distances therein named.

SECTION 5. This act shall not in any manner affect the power or authority of the Railroad and Warehouse Commission, except that no duty shall rest upon the Railroad and Warehouse Commission to enforce any rates specifically fixed by this or any other statute

of this state. Whenever in a proceeding regularly pending before the Railroad and Warehouse Commission, it shall be made to appear to the satisfaction of said Commission that the rates herein prescribed are unreasonable, it may by order fix higher or lower rates for the transportation of any of the commodities herein mentioned, over the line of any railroad in this state, and such rates when so fixed shall supersede the rates herein prescribed upon said line of railroad, and shall be enforced as prescribed by the law relating to such orders, and until such order shall have been made by said Railroad and Warehouse Commission the rates herein prescribed shall be the exclusive legal maximum rates for the transportation of the commodities herein enumerated between points within this
257 state.

SECTION 6. Every railroad company transacting the business of a common carrier within this state shall adopt and publish and put into effect rates not exceeding the charges specified herein for the transportation by it, between stations upon its line of road in this state, of the commodities named in this act; and every officer, director, traffic manager or agent or employé of such railroad company, exercising any authority or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by said railroad company of rates not exceeding those specified in this act; and any officer, director or such agent or employé of any such railroad company who violates any of the provisions of this section, or who causes, or counsels, advises or assists any such railroad company to violate any of the provi-ions of this section, shall be guilty of a misdemeanor, and may be prosecuted therefor in any county into which its railroad extends, and in which it has a station, and upon conviction thereof be punished by imprisonment in the county jail for a period not exceeding ninety days.

SECTION 7. If at the time of the taking effect of this act any railroad is maintaining a rate between any two stations in this state that is less than the rate herein pre-cribed for the same distance, this act shall not be construed as authorizing the raising of such rate.
258 SECTION 8. This act shall take effect and be in force from and after June 1, 1907.

L. H. JOHNSON,
Speaker of the House of Representatives.
ADOLPH O. EBERHART,
President of the Senate.

House File No. 1190.

An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad and Warehouse Commission.

Passed the House of Representatives the ninth (9th) day of April, one thousand nine hundred and seven (1907). Senate amendment concurred in and repassed as amended the fifteenth (15th) day of April, one thousand nine hundred and seven (1907).

ADOLPH E. L. JOHNSON,
Chief Clerk of the House of Representatives.

Passed the Senate the twelfth (12th) day of April, one thousand nine hundred and seven (1907). Vote by which bill was passed reconsidered; bill amended and repassed as amended the thirteenth (13th) day of April, one thousand nine hundred and seven (1907).

S. A. LANGUM,
Secretary of the Senate.

Approved April 18th, 1907.

JOHN A. JOHNSON,
Governor of the State of Minnesota.

Filed April 18th.

JULIUS A. SCHMALL,
Secretary of State.

259

EXHIBIT 5.

Distance in miles.	Wheat flour.			Coarse grain.			Lumber.		Sheep, D. D., cattle.		Sheep, S. D., hogs.			Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
5	2.7	4.	3.5	2.7	4.	3.5	2.7	3.5	4.4	5.5	4.25	4.9	7.	51	51	.54	.60	.44	.60
10	3.3	4.	3.5	2.8	4.	3.5	3.3	3.5	5.5	5.5	4.25	5.5	7.	51	51	.62	.60	.49	.60
15	3.8	4.5	3.5	3.4	4.5	3.5	3.8	4.	5.5	6.	4.25	6.3	7.8	61	61	.63	.60	.51	.60
20	4.4	5.	4.5	3.8	5.	4.5	4.4	4.5	6.3	6.5	5½	6.8	8.5	81	81	.65	.60	.52	.60
25	4.6	5.5	5.	4.	5.5	5.	5.4	5.	6.7	7.6	6½	7.6	9.9	91	91	.69	.60	.54	.60
30	4.8	6.	5.5	4.2	6.	5.5	5.6	5.5	7.4	8.7	7½	8.3	11.3	91	91	.70	.70	.57	.70
35	5.	6.5	6.	4.5	6.5	6.	5.8	6.	7.9	9.8	8.	9.1	12.7	10.	10.	.72	.80	.58	.80
40	5.2	6.	6.	4.6	6.5	6.	6.	6.	8.9	10.9	8½	9.7	14.1	10½	10½	.74	.80	.59	.85
45	5.4	6.5	6.5	4.8	6.5	6.	6.3	6.5	9.2	11.4	8.5	10.3	14.8	10½	10½	.75	.80	.61	.85
50	5.7	7.	6.5	5.1	7.	6.5	6.5	7.	9.8	12.	9.	11.	15.5	12.	12.	.77	1.00	.62	.90
55	5.9	7.5	7.	5.1	7.5	7.	6.8	7.5	10.	12.5	9.5	11.3	16.2	13½	13½	.81	1.00	.64	.90
60	6.1	8.	7.	5.3	8.	7.	7.0	8.	10.2	13.	10.5	11.5	16.9	13½	13½	.83	1.05	.65	.95
65	6.3	8.5	7.	5.5	8.5	7.	7.4	8.5	10.5	13.6	10½	11.8	17.6	13½	13½	.85	1.05	.69	.95
70	6.5	9.	7.	5.8	9.	7.	7.5	9.	10.7	14.2	10½	12.	18.3	14.	13½	.87	1.10	.70	1.00
75	6.7	9.5	7.	6.	9.5	7.	7.7	9.5	10.9	14.7	11.	12.3	19.	14.	14.	.89	1.10	.72	1.00
80	7.	9.5	7.	6.2	9.5	7.	8.1	9.5	11.1	15.3	11.	12.5	18.8	14.	14.	.93	1.15	.74	1.05

EXHIBIT 5—Continued.

Distance in miles.	Wheat flour.			Coarse grain.			Lumber.		Sheep, D. D., cattle.			Sheep, S. D., hogs.				Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
85	7.2	10.	7.5	6.3	10.	7.5	8.3	10.	11.3	15.8	11.5	12.7	20.5	14½	14.5	.95	1.15	.75	1.05
90	7.4	10.5	7.5	6.5	10.5	7.5	8.5	10.5	11.5	16.4	12.	13.	21.2	15.	15½	.97	1.20	.77	1.10
95	7.6	11.	7.5	6.7	11.	7.5	8.7	11.	11.8	16.9	12.	13.3	21.9	15½	15½	.99	1.20	.80	1.10
100	7.8	11.5	7.5	7.	11.5	7.5	9.	11.5	12.	17.4	12.5	13.5	22.6	16.	16.	1.01	1.25	.82	1.15
105	7.9	12.	8.	7.	12.	8.	9.2	12.	12.2	18.	12½	13.7	23.3	16½	16½	1.04	1.25	.83	1.15
110	8.1	12.	8.	7.	12.	8.	9.3	12.	12.4	18.	13½	13.9	23.3	16½	17½	1.06	1.30	.84	1.20
115	8.2	12.5	8.	7.2	12.5	8.	9.4	12.5	12.6	18.5	14.	14.3	24.	16½	18.	1.07	1.35	.85	1.25
120	8.2	12.5	8.2	7.2	12.5	8.5	9.4	12.5	12.8	18.5	14½	14.5	24.	16½	18.	1.08	1.40	.86	1.30
125	8.3	13.	8.5	7.3	13.	8.5	9.5	13.	13.	19.2	14½	14 7	24.7	16½	18.	1.10	1.45	.87	1.35
130	8 4	13.	9.	7.4	13.	9.	9.6	13.	13.3	19.2	14½	14.9	14.7	16½	18.	1.11	1.50	.88	1.40
135	8.5	13.5	9.	7.4	13.5	9.	9.8	13.5	13.5	19.6	14½	15.3	25.4	16½	18.	1.12	1.55	.92	1.45
140	8.5	13.5	9.	7.5	13.5	9.	9.8	13.5	13.7	19.6	14½	15.5	25.4	16½	18.	1.16	1.60	.93	1.50
145	8.6	14.	9.5	7.6	14.	9.5	9.9	14.	13.9	20.2	14½	15.7	26.2	17.	18.	1.17	1.70	.94	1.60
150	8.7	14.	9.5	7.6	14.	9.5	10.	14.	14.2	20.2	14½	15.9	26.2	17½	18.	1.19	1.75	.95	1.65
155	8.8	14.5	9.5	7.7	14.5	9.5	10.1	14.5	14.4	20.7	14½	16.2	26.8	17½	18½	1.20	1.75	.96	1.65
160	8.8	14.5	9.5	7.8	14.5	9.5	10.1	14.5	14.6	20.7	14.5	16.4	26.8	17½	18½	1.22	1.75	.98	1.65

EXHIBIT 5—Continued.

Distance in miles.	Wheat flour.			Coarse grain.			Lumber.		Sheep, D. D., cattle.			Sheep, S. D., hogs.			Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
165	9.	15.	9.5	7.9	15.	9.5	10.4	15.	14.8	21.3	14.5	16.7	27.5	17½	18½	1.24	1.80	1.00	1.70
170	9.	15.	10.	7.9	15.	10.	10.4	15.	15.	21.3	14½	16.9	27.5	18.	19.	1.29	1.85	1.01	1.75
175	9.1	16.	10.	8.1	16.	10.	10.6	15.5	15.3	21.8	15.	17.2	28.2	18½	19½	1.31	1.90	1.05	1.80
180	9.1	16.	10.	8.1	16.	10.	10.6	15.5	15.5	21.8	15½	17.4	28.2	18½	20.	1.33	1.90	1.07	1.80
185	9.3	16.5	10.	8.2	16.5	10.	10.7	16.	15.7	22.4	16.	17.6	28.9	...	20.5	1.35	1.90	1.09	1.80
190	9.4	16.5	10.	8.3	16.5	10.	10.8	16.	15.9	22.4	16½	17.9	28.9	...	20.5	1.37	1.90	1.10	1.80
195	9.5	17.	10.	8.3	17.	10.	10.9	16.5	16.1	22.9	16.5	18.2	29.6	...	21.5	1.42	1.90	1.12	1.80
200	9.6	17.	10.	8.4	17.	10.	11.	16.5	16.3	22.9	17.	18.4	29.6	...	21.5	1.44	1.90	1.16	1.80
210	9.7	17.5	10.5	8.5	17.5	10.5	11.1	17.	16.6	23.4	17.5	18.6	30.3	...	22.	1.48	1.95	1.19	1.85
220	9.8	18.	10.5	8.6	18.	10.5	11.2	17.5	16.8	24.	17½	18.8	31.1	...	23.5	1.54	2.10	1.22	1.90
230	9.9	18.5	11.	8.7	18.5	11.	11.4	18.	17.	24.5	18.5	19.1	31.8	...	24.	1.58	2.10	1.28	2.00
240	10.	19.	11.	8.8	19.	11.	11.6	18.5	17.2	25.1	18½	19.4	32.5	...	24½	1.63	2.10	1.31	2.00
250	10.2	19.5	11.	8.9	19.5	11.	11.8	19.	17.4	25.6	19.	19.6	33.2	...	24½	1.68	2.10	1.34	2.00
260	10.3	20.	11.	9.1	20.	11.	11.9	19.5	17.6	26.1	19.5	19.8	33.9	...	25.	1.72	2.10	1.37	2.00
270	10.5	20.5	11.	9.3	20.5	11.	12.	20.	17.9	26.7	19½	20.2	34.6	...	25½	1.72	2.10	1.42	2.00
280	10.6	21.	11.	9.4	21.	11.	12.2	20.5	18.1	27.3	20.	20.4	35.3	...	25½	1.82	2.10	1.46	2.00
290	10.8	21.5	11.	9.5	21.5	11.	12.4	21.	18.3	27.8	20½	20.6	36.	...	26.	1.87	2.10	1.49	2.00

EXHIBIT 5—Continued.

Distance in miles.	Wheat flour.			Coarse grain.			Lumber.		Sheep, D. D., cattle.			Sheep, S. D., hogs.				Hard coal.		Soft coal.	
	Rate for commodities in classification No. 11, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 12, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 13, in cents per 100 lbs.	Distance.	Rate for commodities in classification No. 14, in cents per 100 lbs.	Distance.	Terminal.	Rate for commodities in classification No. 15, in cents per 100 lbs.	Hog distance.	Sheep terminal.	Hog terminal.	Rate for commodities in classification No. 16, in dollars and cents per ton.	Terminal from Duluth.	Rate for commodities in classification No. 17, in dollars and cents per ton.	Terminal from Duluth.
300	10.9	22.	11.	9.6	22.	11.	12.5	21.5	18.5	28.4	20¼	20.8	36.7	...	26.	1.92	2.10	1.54	2.00
310*	11.	22.	11.	9.7	22.	11.	12.6	22.	18.7	28.9	20¼	21.1	37.4	...	26.	1.94	2.10	1.56	2.00
320	11.1	22.5	...	9.8	22.5	...	12.8	22.5	19.	29.4	...	21.4	38.1	...	...	1.96	....	1.57	....
330	11.2	23.	...	9.9	23.	...	12.9	23.	19.2	30.	...	21.6	38.8	...	...	1.99	....	1.59	....
340	11.3	23.5	...	9.9	23.5	...	13.1	23.5	19.4	30.5	...	21.8	39.5	...	...	2.02	....	1.60	....
350	11.4	24.	...	10.	24.	...	13.2	24.	19.6	31.1	...	22.1	40.2	...	...	2.04	....	1.63	....
360	11.5	24.	...	10.1	24.	...	13.3	24.5	19.8	31.6	...	22.3	40.9	...	...	2.06	....	1.66	....
370	11.7	24.5	...	10 2	24.5	...	13.4	25.	20.	32.2	...	22.6	41.6	...	...	2.08	....	1.67	....
380	11.8	25.	...	10.3	25.	...	13.5	25.5	20.3	32.7	...	22.8	42.3	...	...	2.11	....	1.69	....
390	11.9	25.5	...	10.5	25.5	...	13.6	26.	20.5	33.3	...	23.1	43.	...	...	2.13	....	1.70	....
400	12.	26.	...	10.6	26.	...	13.7	26.5	20.7	33.8	...	23.3	43.8	...	...	2.16	....	1.72	....

*310 miles furthest distance in Minnesota on N. P.

First column shows rates established by the Act, second and third columns show present distance and terminal rates, respectively.

261 EXHIBIT 6.

An Act Prescribing the Maximum Rate to be Charged for the Transportation of Passengers Upon Railroads Within the State of Minnesota, Providing for the Enforcement of the Same and Penalties for the Violation Thereof.

Be it Enacted by the Legislature of the State of Minnesota:

SECTION 1. No railroad company owning, operating or using a line of railroad within, or partly within, the State of Minnesota, shall charge or collect more than two (2) cents per mile for carrying over its road on any trip wholly within the state any passenger of twelve (12) years of age or over, together with baggage not exceeding one hundred and fifty (150) pounds in weight, or more than one (1) cent per mile for any such passenger under twelve (12) years of age, together with baggage not exceeding seventy-five (75) pounds in weight.

SECTION 2. Any railroad company or any officer, agent or representative thereof, who shall violat- any provision of this act shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding five thousand (5,000) dollars, or by imprisonment in the state prison for a period not exceeding five (5) years, or by both such fine and imprisonment.

SECTION 3. This act shall take effect and be in force from and after the 1st day of May, 1907.

(Endorsed:) Bill of Complaint. Filed May 29th, 1907. Henry D. Lang, Clerk. Louise B. Trott, Deputy.

262 (Endorsed:) Amended and Supplemental Bill of Complaint. Filed April 20th, 1908. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

263 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD and ADOLPH E. MICHAUD.

Take notice that the annexed motion for the appointment of a Special Master, and the order of the Court limiting the time for the taking of testimony herein, will be brought on for hearing before Honorable Walter H. Sanborn, Judge of said Court, at his chambers in the Federal Building, in the City of St. Paul, Minnesota, on

Monday the 20th day of April, 1908, at eleven (11) o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

To Edward T. Young, Esq., Solicitor pro se.

Messrs. O'Brien & Stone, and George T. Simpson, Solicitors for Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

W. C. Bicknell, Esq., Solicitor for J. Rumsey Reeve.

Messrs. Frank T. White and George Tyler, Solicitors for O. J. Whiteman.

264 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD and ADOLPH E. MICHAUD.

Now comes the above named complainant and moves the Court that it appoint a Special Master in this case to take the testimony and to make and report to the Court his findings of fact on the issues raised by the pleadings herein, and to have such other powers and perform such other duties in the premises as the Court shall be advised; and at the same time that the Court will limit the time for the taking of testimony herein.

Dated St. Paul, Minnesota, April 20th, 1908.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

(Endorsed:) Notice and Motion for appointment of Special Master. Filed May 4th, 1908. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

265 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD and ADOLPH E. MICHAUD.

This cause came on for hearing on April 20, 1908, upon the motion of complainant that a Special Master be appointed and that

a time for taking testimony herein be fixed. Mr. Jared How appeared for the complainant, Honorable Edward T. Young appeared for himself and Mr. Thomas D. O'Brien, Mr. Stiles W. Burr and Mr. William A. Lancaster for other parties interested herein, and after argument and consideration,

It is hereby ordered that Honorable Charles E. Otis of St. Paul, Minnesota, be, and he is hereby, appointed Special Master in Chancery in this case.

The Special Master hereby appointed is empowered and directed to take and report to the Court the evidence in this cause.

The Special Master hereby appointed is empowered and directed to examine the evidence, to make the necessary computations, and to find and state the facts in this case, and to make a report to this Court of the facts so found and of the results of such computations, and to recommend to the court in his report a form of a proper decree herein.

It is further ordered that upon the completion of his report of his findings of fact, the Special Master shall notify counsel for the respective parties thereof and shall exhibit said report to
266 them, or shall deliver to them copies thereof, that each of the parties to this suit may thereupon file exceptions to the report with the Master within thirty (30) days after notice of its completion, and the Master shall thereupon consider and sustain or over-rule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings, thereon and any modifications of or additions to his report he may deem it just or proper to make in view of such exceptions.

Upon the filing of such report and exceptions the cause shall stand for hearing before the court upon the said exceptions as though they had been made at the time specified in Rule 83 in equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainant shall take his evidence in support of his amended and supplemental bill is fixed at and limited to ninety (90) days from the date hereof, that the time within which the defendants shall take their evidence in defense herein is fixed at and limited to sixty (60) days thereafter, that the time within which the complainant shall take his evidence in rebuttal is fixed at and limited to thirty (30) days thereafter.

And it is further ordered that George N. Hillman be, and he is hereby appointed the stenographer and authorized to take and transcribe, under the direction of the Special Master, the testimony in this case.

WALTER H. SANBORN,
Circuit Judge.

St. Paul, Minnesota, May 4th, 1908.

(Endorsed:) Order appointing Master and Stenographer and limiting the time for taking of testimony. Ent. T. M. Vol. 37, p. 282 & 3. Filed May 4th, 1908. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

267 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD and ADOLPH E. MICHAUD.

I, Chas. E. Otis, do solemnly swear that I will support the Constitution of the United States, and faithfully and impartially, and to the best of my ability, perform my duties as Special Master in Chancery in the above entitled cause, So help me God.

CHAS. E. OTIS.

Subscribed and sworn to before me this 12th day of May, A. D. 1908.

[SEAL.]

HENRY D. LANG,
Clerk U. S. Circuit Court
for the District of Minnesota.

(Endorsed:) Oath of Special Master. Filed May 12th, 1908. Henry D. Lang, Clerk. Ent. Misc. Record p. 171.

268 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD, and ADOLPH MICHAUD.

Separate Answer of Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young to the Amended and Supplemental Bill of Complaint.

The separate answer of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, to the amended and supplemental bill of complaint of the complainant above named, respectfully shows:

These defendants now and at all times hereafter, saving and reserving into themselves, the benefit and advantage of exceptions which can or may be had or taken to the many errors and other imperfections in said complainant's said amended and supplemental bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is, or are material or necessary for them to make answer unto, says:

I.

They admit the residence and citizenship of the parties named in said bill of complaint, as therein alleged, and that the defendant, the Northern Pacific Railway Company is a corporation, organized under the laws of the State of Wisconsin. That defendant, Edward T. Young, is the Attorney General of the State of Minnesota, and that the defendants Ira B. Mills, Charles F. Staples, and William E. Young are the members of and constitute the Railroad and Warehouse Commission of the State of Minnesota; and that
269 the defendant Railway Company is operating lines of railway as a common carrier of passengers and freight in and through the State of Minnesota and the other states named in the bill of complaint; and is engaged in the business of interstate commerce between said various states, and is also engaged in the business of intrastate commerce in the State of Minnesota.

II.

These defendants admit that the lines of railway operated by the defendant railroad company are operated as one entire system, but they have no knowledge or information sufficient to form a belief as to whether the stock and bonds of said company outstanding, represent *wh*uch whole system, and as to this demand proof. They admit that a large part of the business of said defendant railway company, is the transportation of interstate commerce, but have no knowledge or information sufficient to form a belief as to what part of said railway company's business is local to the State of Minnesota. They deny that there is any necessary confusion or intermingling of the business transacted by said railroad company, which is wholly local to each of the states in which it operates, with that which is interstate commerce, and allege that the amount and character of each, the cost and productiveness of each, and the value of the property employed in each kind of business, may be segregated and ascertained; and that the same have been so segregated and ascertained, as a matter of common practice, amongst railroads for many years past.

III.

These defendants believe and admit, that the greater portion of defendant company's lines have been judiciously located, but defendants have been informed and believe, that certain of said lines have not been judiciously located, and therefore they deny, and believe the denial to be true, that all of said defendant company's said lines have been judiciously located; and as to what portions,
270 and as to how much of said defendant company's said lines have been judiciously located, defendants require proof, if the same be necessary.

And these defendants deny upon information and belief, that said defendant railroad company's property represents an actual and fair value of not less than three hundred and fifty million ($350,000,000) dollars, and allege that the fair value of said property is much less

than that sum; and originally cost, and could now be reproduced for much less than that sum; and allege that the fair value of said property is much less than the outstanding stock and bonds of said defendant railway company. And these defendants further allege that only a small portion of the property of said defendant railway company, is devoted to and employed in the business of transporting freight and passengers wholly within the State of Minnesota, and between stations in that state. And these defendants ask that the complainants be required to furnish proof as to the amount and value of said property so used and engaged in said transportation within the state of Minnesota.

IV.

Further answering these defendants aver that prior to the 6th day of September 1906, Ira B. Mills, Charles F. Staples, and William E. Young, acting as the Railroad and Warehouse Commission of the State of Minnesota, in their official capacity as aforesaid, made an exhaustive investigation of the so-called "Merchandise Rates" charged by the defendant, the Northern Pacific Railway Company, and other railroads in the State of Minnesota, for the transportation between points in Minnesota, of the merchandise of the kind, quality and class described in Exhibit 1, attached to said supplemental bill of complaint. Pursuant to the statute in such case made and provided, they conducted hearings in the course of such investigation, due notice of the same having been given to the railroad compa-
271 nies interested. That the defendant railroad company duly appeared, answered and took part in said proceedings, and the Railroad and Warehouse Commission of the State of Minnesota, then and there had full jurisdiction and authority, both of the subject matter of said investigation, and of said defendant Railroad Company, for the purpose of conducting said hearing, receiving and considering the evidence adduced thereat, and fixing reasonable, just and equal rates, for the transportation between stations in the State of Minnesota, by common carriers, of merchandise of the kind and class described in said exhibit 1. And said defendants, as members of, and constituting said commission, duly heard and gave due consideration to the voluminous and comprehensive evidence, much of which was submitted by and on behalf of said defendant railway company; and as a result of said investigation, and their consideration of the evidence adduced therein, said defendants, constituting the Railroad and Warehouse Commission as aforesaid, on the 6th day of September, 1906, made the order referred to, and complained of in said bill of complaint and in and by said order fixed the schedule of rates in said bill of complaint referred to and complained of and set forth in and by said exhibit 1, which said exhibit 1 is hereby admitted to be true and correct copy of the order made on said day and schedule referred to in said order of September 6th, 1906.

V.

That said defendants, the Railroad and Warehouse Commission, in pursuance to their official duties in the premises, made said order

by reason of the fact that by the evidence adduced at said hearings, and by other competent and sufficient information they were informed and convinced, and these defendants now believe and allege,
that the rates theretofore charged by said defendant railway
272 company, for the transportation of merchandise between stations in Minnesota; were on said September 6th, 1906, and theretofore, unequal, unjust and unreasonable and excessive, exacting from the public an unreasonably large sum for the service rendered, and yielding to said railroad company an unreasonably high return; in that said rates together with said defendant company's other rates, from traffic local to Minnesota, produced a sum considerably more than sufficient to pay the cost of handling said traffic, together with a fair return on the value of the property devoted to the same.

VI.

That said defendants, the Railroad and Warehouse Commission of the State of Minnesota, were further induced to make said order by reason of the fact, that after considering the evidence adduced at said hearings, and other competent and sufficient information, they were informed and convinced and these defendants allege, believing it to be true, that the rates so fixed by them in their said order of September 6th, 1906, and the accompanying schedule, upon the merchandise and articles therein named, for the transportation of same between points in the State of Minnesota, were then, and are now in every respect equal, just and reasonable as to the said defendant railway company, and the complainant herein as a stockholder of said defendant railway company, and all the other stockholders of said company; and defendants now aver that the said rates yield to said defendant railway company, a fair return upon the present value of its property, including both its line and equipment used by it in said traffic between points in the State of Minnesota, as such value is, or may be asvertained, having due regard for the original cost of construction of said lines and other property, the amount expended in permanent improvements thereof, the amount and market value of said company's stocks and bonds, and the present as compared
with the original cost of construction, the probable earning
273 capacity of the property under said rates and the sum required to meet the necessary and lawful operating expenses of said company, together with all other elements affecting the value of said property, which are properly to be considered herein.

VII.

Further answering these defendants allege, that the rates provided in and by said order of September 6th, 1906, are equal and just, and are more than adequate for the service performed or required thereunder, and that after ample and full consideration of said rates by defendant railroad company, its officers, agents, and directors, and as these defendants believe, by the complainant, said rates were duly accepted, adopted and promulgated by said defendant railroad company, and went into full force and effect, on or about the 15th day of

November, 1906, and have ever since been maintained and used by said company, as its regular and duly published rates, for the transportation of the merchandise described in Exhibit 1, between stations in the State of Minnesota; and no objection or protest was made against the same by the defendant railroad company, this complainant or any other person, until the exhibit of the original bill of complaint herein, and that no application for permission to change or raise said rates has been made to the Railroad & Warehouse Commission of the State of Minnesota by the defendant railroad company, or the complainant or any other person, since the same went into effect on November 15th, 1906; and these defendants assert, that the rates so prescribed by said order of September 6, 1906, are the only legal and lawful rates, now existing in the State of Minnesota, for the transportation of the merchandise described in said schedule, between stations in the state of Minnesota, and that such rates can only be changed in the manner, and by the proceedings provided by law for a change of rates.

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VIII.

Further answering, these defendants, allege that if the rates so fixed by the order of said commission of September 6, 1906 were not fair or just to said railroad company, or were not acceptable to it, it might have refused to promulgate and put the same into effect, or it might have duly appealed from the order of said Commission to the District Court of the State of Minnesota as provided by law. That as these defendants are informed and believe, no demand was ever made by said complainant upon said defendant railroad company, its officers, agents or directors, to appeal from the order of said Commission, made and entered on September 6, 1906, or to take any steps in relation thereto, to test the validity thereof, as provided by the laws of the State of Minnesota in that behalf enacted.

IX.

These defendants allege that if the defendant railroad company had not thus adopted, published and promulgated the order of said commission, hereinbefore referred to, nor filed with said commission its schedule of rates and charges as required by said Order, the defendant Edward T. Young, as Attorney General of the State of Minnesota, upon request of the defendants, Ira B. Mills, Charles F. Staples and William E. Young, as the Railroad and Warehouse Commission of said State, would have brought the proper legal proceedings for the purpose of enforcing the order of the commission hereinbefore referred to; but that until the rendition of the final judgment in such proceedings, the defendant railroad company, its officers, servants, and agents would be subject to no fine or penalty through, by, or on account of said order whatever, nor is said company in any manner subject to harassing litigation of any kind, or to a multiplicity of suits by reason thereof.

X.

Further answering, these defendants admit, that upon the
275 3rd day of May, 1907, the said Railroad and Warehouse Commission of the State of Minnesota, likewise made, published and served an order supplemental to said order of September 6, 1906, and that a true copy of said supplemental order is attached to said amended bill of complaint, marked Exhibit 2. That the order of which said Exhibit 2 is a copy, is a slight modification of said order of September 6, 1906; and as these defendants have been informed and believe, the same has been in like manner accepted, promulgated and adopted by said defendant railroad company; and these defendants now repeat and reaffirm all of the allegations herein made, with reference to said order of September 6, 1906, as to said modification and amendment thereof by the order of May 3rd.

XI.

These defendants admit the approval on the 18th day of April 1907, of an act of the Legislature of the State of Minnesota, entitled "An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad and Warehouse Commission"; and a copy of said Act is attached to said amended bill of complaint, marked Exhibit 4. And also the approval on the 4th day of April, 1907, of an Act of the Legislature of the State of Minnesota, entitled, "An act providing the maximum rate to be charged for the transportation of passengers upon railroads within the state of Minnesota; providing for the enforcement of the same; and penalties for the violation thereof"; a copy of which act is attached to said amended bill of complaint, marked Exhibit 6. But these defendants deny that prior to the taking effect of said act fixing maximum passenger rates, said defendant railroad company was charging or collecting in the state of Minnesota, three (3) cents per mile for passengers over twelve (12) years of age, and one and one half 1½ cents per mile for passengers under twelve (12) years of age; and allege that while that rate may have been charged for some passengers in said State, a large proportion of the persons carried
276 in the State of Minnesota by said defendant company, were charged much less than two (2) cents per mile for such transportation.

XII.

Further answering these defendants aver that for many years last past, the rates charged by the defendant railroad company for the transportation of passengers within the state of Minnesota, have been unequal, unjust and exorbitant, and that the rates and charges specified in said act of the Legislature of April 4, 1907, for the transportation of passengers within said state, are equal, just and reasonable, and if enforced, the same will afford to the defendant railroad company and its stockholders an ample revenue to pay the necessary costs and expenses of conducting said business, together with a portion of the fixed charges of said defendant railroad company, prop-

erly chargeable to such passenger service; and said proper proportion of all of the other legitimate and proper expenses of said defendant railroad company, chargeable thereto, and will yield to said company and its stockholders, a fair and adequate return upon the value of the property invested in said business. And these defendants respectfully aver, that said Act of April 4, 1907, relates to and affects the transportation of passengers, exclusively within the State of Minnesota, and between points therein, and that it does not purport to, nor does it in any manner affect or burden interstate commerce; and these defendants deny that the existence or maintenance of the rates provided in said act can in any manner affect, change or lower any other rate or rates maintained by said defendant railroad company which is or are just and reasonable, nor can the same constitute discrimination as to any other rate or rates, if such other rate or rates is or are just and reasonable, nor affect nor constitute discrimination as to any interstate rate maintained by said railroad company, whether the latter is reasonable or otherwise.

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XIII.

Further answering these defendants admit that said defendant railroad company adopted the passenger rates provided in said act, and put the same into effect; that said act became operative on May 1st, 1908. And they admit and allege that said rates have been in operation upon said railroad company, within the state of Minnesota, ever since that date. And these defendants further allege that notwithstanding that fact, the revenue of said railroad company from its passenger service, has largely increased.

XIV.

Further answering these defendants allege, that prior to the 6th day of September, 1906, the rates maintained by said defendant railroad company for the transportation of freight between stations in the State of Minnesota, were unequal, unjust and exorbitant; and that the rates prescribed in said order of September 6, 1906, and in said Act of the Legislature of April 18, 1907, are fair, reasonable, just and equal, and will afford to said defendant railroad company, an ample revenue to pay the cost of the service required for such transportation, as well as every other proper, legitimate and necessary expense in connection therewith, a proper proportion of the fixed and all other legitimate charges and expenses of said defendant railway company, and in addition thereto, a fair and reasonable margin of profit for such service, and a fair and reasonable return upon the value of the property appropriated thereto, and will in truth and in fact render to said railroad company, a much larger return and a higher rate for the service required, than said railroad company received for similar services, upon many other portions of its line of railway.

That it is true that said rates prescribed a certain charge known as "a terminal charge," which in this instance includes both terminals: and in addition thereto, a hauling charge. But these defendants deny that the justness or reasonableness of said rates can be de-

termined by endeavoring to subdivide the same, or by ap-
278 plying any portion of the rate allowed to any particular portion of a given haul, as is attempted to be done in said amended bill of complaint; nor can the justness of said rates be determined by extending the same for two thousand (2000) miles. And these defendants allege that said rates must be considered in and by themselves, and as applying to traffic entirely within the State of Minnesota. And they allege that the average distance to which intrastate freight is hauled upon the lines of said defendant railway company in the state of Minnesota, is one hundred and ten (110) miles and no more.

XV.

Further answering these defendants admit upon information and belief, that the specific rates set forth in said amended bill of complaint, have been heretofore maintained by said defendant railroad company, but they deny that the same are fair illustrations of the rates generally maintained by said railroad company, either in the state of Minnesota or elsewhere. And this defendant alleges that in many instances, said railroad company, transported freight within the State of Minnesota, as well as elsewhere, for much less than the amounts given in said bill of complaint. For instance, these defendants allege that for a long time past, said defendant railroad company has under its special contract with the Chicago, Milwaukee and St. Paul Ry. Company, hauled soft coal from the city of Duluth to the city of St. Paul, Minnesota, a distance of one hundred and fifty six (156) miles, at and for the rate of forty ($.40) cents per ton. That its rates on timber from Pacific Coast points to points in the State of Minnesota, have been proportionately much lower than are the rates provided for by said Act of April 18, 1907. And these defendants believe the same to be true as to most, if not all of its other rates.

XVI.

Further answering, these defendants allege that the rates
279 prescribed for the transportation of freight by said order of the Railroad and Warehouse Commission, and said Act of the Legislature, referred exclusively to the transportation of freight, only where such transportation commences and ends within the State of Minnesota; and that the defendant railway company is under no legal obligation, even if said rates shall be found to be proper and just, to readjust or change any of its other rates, unless such other rates are themselves unjust or unequal. And they deny that conditions throughout the States of Minnesota, Wisconsin, Dakota and Montana, or that portion of those states referred to in said amended bill of complaint, are the same, or that it is true that the same rates are necessarily proper in each of said states, and between the same. And these defendants deny that said defendant railroad company cannot put into effect said rates without discriminating against other localities upon the line of its railroad outside of the state of Minnesota; and deny that the enforcement of said rates will in any manner burden, regulate or interfere with interstate commerce, or that the

legal and necessary effect of the enforcement of said rates, will in any manner burden, interfere with or regulate interstate commerce.

XVII.

These defendants upon information and belief, deny that the expense of performing the service of transportation of local traffic between stations in the state of Minnesota, is as great as the cost of handling and transporting such traffic in several other states, through which said defendant company's lines of railway run; and deny that the rates of interstate business per mile of haul, should be or are in all cases, greater than the rates per mile upon interstate business; and allege that if such comparison is to be made in any case, resort must be had to all the facts and circumstances
280 surrounding the traffic in question.

These defendants admit that the defendant railroad Company's operating and other expenses have increased to some extent during the last few years, but allege that by reason of the improvement in equipment and methods of handling transportation, the relative cost has not been increased. These defendants aver that the defendant railroad company's operating and other expenses, both as to traffic local to the state of Minnesota, and as to interstate traffic, and traffic in other states, for many years have been, and now are largely and unlawfully increased by unjustifiable and unwise expenditures of the funds of said company for purposes not authorized by law, or the charter of defendant railroad company; the exact amount or precise nature of such unwise expenditures being now unknown to these defendants.

XVIII.

Further answering these defendants aver that said defendant railroad company's lines of road in the State of Minnesota, are situated in a thriving and rapidly growing section of the state, and the volume of traffic upon said railroad, and the freight on the commodities referred to in the order of said commission of September 6, 1906, and the act of the Legislature of April 18, 1907, will be necessarily greatly increased in the near future; that said freight commodities are of the class and character which enable them to be transported at a very slight cost as compared with other classes of freight; but notwithstanding that fact, these defendants aver that under the tariffs and charges heretofore maintained by said defendant company, the freights named in said order, and said act of the Legislature were compelled to yield an unequal and unfair proportion of the entire earnings of said company.

XIX.

Further answering these defendants aver that for the reasons hereinbefore set forth, this court has no jurisdiction to alter, suspend, or change the rates prescribed in said order of September 6,
281 1906, and these defendants deny that the jurisdiction of this court ought to have been, or can be invoked in this cause.

And they further deny that said complainant is entitled to the relief, or any part thereof, in his said amended bill of complaint demanded.

These defendants pray the same advantage in the aforesaid answer, as if they had pleaded or demurred to the said Bill of complaint; not admitting however that there is any matter or thing in said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and satisfactorily answered, confessed, traversed and avoided or denied, true to the knowledge or belief of these defendants, all if which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court may direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD T. YOUNG,
IRA B. MILLS,
C. F. STAPLES,
W. E. YOUNG,
Defendants.

T. D. O'BRIEN,
R. A. STONE,
GEO. T. SIMPSON,
C. S. JELLEY,
Solicitors for Defendants Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Ira B. Mills, on oath say, that I am one of the answering defendants named in the foregoing answer, which I have read, I know the contents thereof, and the same are true, of my own knowledge, except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

IRA B. MILLS.

Subscribed and sworn to before me this 15th day of May, A. D., 1908.

C. LOUIS WEEKS,
Notary Public, Hennepin Co., Minn.

My commission expires May 17th, 1912.

(Endorsed:) Separate Answer. Edward T. Young, Ira B. Mills, Charles F. Staples & William E. Young to the Amended and Supplemental Bill of Complaint. Filed May 16th, 1908. Henry D. Lang, Clerk.

282 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph E. Michaud.

This repliant, David C. Shepard, saving and reserving to himself all and all manner of advantage of exception which may be taken to the manifold errors, uncertainties and insufficiencies of the separate answer of the above named defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, to the amended and supplemental bill of complaint herein, for replication thereunto says that he does and will aver maintain and prove his said amended and supplemental bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays as in and by his said amended and supplemental bill he has already prayed.

HOW, BUTLER AND MITCHELL,
Solicitors for Complainant.

(Endorsed:) Replication. Filed June 1st, 1908. Henry D. Lang, Clerk.

283 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Appearance.

The clerk will enter our appearance for the defendants Edward T. Young and Ira B. Mills, Charles F. Staples and William E. Young.

EDWARD S. DURMENT,
ALBERT R. MOORE,
As Durment & Moore.

(Endorsed:) Appearance of Durment & Moore for defendants Edward T. Young et al. Filed June 8th, 1908, Henry D. Lang, Clerk. Ent. C. R. C. p. 140.

284 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

JUNE 8TH, 1908.

This day come the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, by Durment and Moore, solicitors on whose motion it is hereby ordered that the appearance of said defendants be and the same is hereby entered, and that the appearance of said Durment & Moore be entered as additional solicitors for said defendants.

285 Circuit Court of the United States, District of Minnesota, Third Division.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD, and ADOLPH E. MICHAUD.

The term of office of the above named defendant Edward T. Young, as Attorney General of the State of Minnesota, having expired, and George T. Simpson having been duly elected as such Attorney General of the State of Minnesota, and having qualified and being now acting as such; and

The Term of office of the above named defendant William E. Young, as a member of the Railroad and Warehouse Commission of the State of Minnesota, having expired, and Charles E. Elmquist having been duly elected as a member of the Railroad and Warehouse Commission of the State of Minnesota, and having qualified and being now acting as such;

It is stipulated that said George T. Simpson and Charles E. Elmquist may be substituted as parties defendant in this suit in place and stead of said Edward T. Young and William E. Young respectively.

HOW, BUTLER & MICHELL,
Solicitors for Complainant.

E. T. YOUNG,
GEORGE T. SIMPSON,
O'BRIEN AND STONE,
Solicitors for Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.
WM. C. BICKNELL,
Solicitor for J. Rumsey Reeve.
FRANK WHITE & GEO. TYLER,
Solicitors for O. J. Whiteman.

(Endorsed:) Stipulation and order substituting Parties defendant. Ent. T. M. Vol. 41, p-. 101 & 2.

286 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes June Term, A. D. 1910.

JANUARY 4TH, 1910.

Tuesday morning, Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk.

Equity. No. 857.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, E. A. Evarts, O. J. Whiteman, J. Rumsey Keeve, Achille Michaud, Charles Michaud, and Adolph Michaud.

It appearing to the Court from the stipulation of the parties that, The Term of office of the above named defendant Edward T. Young, as Attorney General of the State of Minnesota, has expired, and George T. Simpson has been duly elected as such Attorney General of the State of Minnesota, and has qualified and is now acting as such: and

The term of office of the above named defendant William E. Young, as a member of the Railroad and Warehouse Commission of the State of Minnesota has expired, and Charles E. Elmquist has been duly elected as a member of the Railroad and Warehouse Commission of the State of Minnesota, and has qualified and is now acting as such:

It is ordered that the said George T. Simpson be and he is hereby substituted as party defendant in this suit in place and stead of Edward T. Young, and that Charles E. Elmquist be substituted as party defendant in this suit in place and stead of William E. Young, and that all orders and proceedings made, entered or had in this suit shall apply to and bind said substituted defendants and each of them in the same manner and with the same force and effect as if said substituted defendants and each of them had been parties
287 defendant in this suit from the time of the institution thereof.

WALTER H. SANBORN, *Judge.*

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

288 Filed Jan. 4th, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

Circuit Court of the United States, District of Minnesota, Third Division.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Appearance.

The clerk will enter my appearance for the defendants George T. Simpson and Charles E. Elmquist, substituted as defendants in the above suit in place of Edward T. Young and William E. Young.

GEORGE T. SIMPSON.
EDWARD T. YOUNG.
C. LOUIS WEEKS.

(Endorsed:) Appearance of Geo. T. Simpson et al. solicitors for Certain defendants. Ent. C. R. C. p. 147. Filed Feb. 15th, 1910. Henry D. Lang, Clerk.

289 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

FEB. 15TH, 1910.

This day come the defendants George T. Simpson and Charles E. Elmquist substituted as defendants in place of Edward T. Young and William E. Young, by George T. Simpson, Edward T. Young and C. Louis Weeks solicitors, on whose motion it is hereby ordered that the appearance of said substituted defendants be and the same is hereby entered.

290 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

JOHN S. KENNEDY and HENRY E. DIMOCKS
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 862.

WILLIAM SHILLABER
vs.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Whereas the State of Minnesota has made no adequate appropriation to pay the costs of printing, the cost of paying the reporter and the compensation of the special master in these cases, and it is necessary that these costs be paid to the end that the cases may be speedily prepared for hearing, we request the complainants to pay these costs and to leave the matter of the taxation thereof to be determined by the court after the final hearing of the cases.

GEORGE T. SIMPSON,
E. T. YOUNG,
Attorneys for Defendants.

Pursuant to the request of the attorneys for the defendants and in the presence of the attorney for the complainants, who has heard the discussion and seen the request,

It is hereby ordered that the complainants pay all expenses referred to in the request and that the ultimate determination of those who shall pay these expenses abide the decision of
291 the Court after the final hearing of the cases in the Circuit Court.

WALTER H. SANBORN,
Circuit Judge.

St. Paul, Minn., May 11th, 1910.

(Endorsed:) Request and Order in Re Costs. Ent. T. M. Vol. 41, p. 311-12. Filed May 18th, 1910. Henry D. Lang, Clerk.

292 Here follows printed copies of 7 Volumes of Testimony printed and furnished by the litigants and used on the hearing before the Court, also printed copies of Complainants' and Defendants' Exhibits in two separate Volumes, certified separate from this Return.

293 Copy.

Circuit Court of the United States, District of Minnesota, Third Division. (In Equity.)

No. 857. Equity.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

and

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Master's Report to the Court.

(Endorsed:) Filed Oct. 29, 1910. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

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293½ United States Circuit Court, District of Minnesota, Third Division. (In Equity.)

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

(Consolidated.)

WILLIAM SHILLABER, Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Master's Report to the Court.

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297 To the Honorable, the Judges of the Circuit Court of the United States for the District of Minnesota, Third Division, sitting in equity:

Now comes Charles E. Otis, by an order of Hon. Walter H. Sanborn, one of the Judges of said Court, made and filed with the Clerk thereof, in each of the above entitled suits, on the 4th day of May, A. D., 1908, appointed Special Master in Chancery, in said suits, respectively with power and direction to take and report to the Court the evidence therein, to examine such evidence, make all necessary computations, find and state the facts so found and the results of such computations, and recommend to the Court a form of a proper decree in each of said several suits, and respectfully reports:

I.

Introductory.

Having first taken and filed with the Clerk of Court his oath of office in each of said suits, the Master summoned the respective parties before him on the 20th day of May, 1908, for the consideration of the matters to him referred and at the time so appointed it was arranged that Complainants should commence their offer of testimony on the 2nd day of June 1908, and proceed with the same with all convenient speed.

By orders simultaneously made and filed and of like tenor and effect there were, in like manner, so referred to the Master nine several suits, consisting of the three above entitled and six others of the same general nature which at about the same time had been instituted by stockholders of railroad companies doing business in Minnesota as complainants against the respective companies of which the respective complainants were stockholders, the Attorney
298 General of the state of Minnesota and the members of the Railroad & Warehouse Commission of Minnesota as defendants, in all of which the solicitors and counsel were substantially the

same. The grievances complained of were of the same general nature and all sought the same relief. Because the issues were identical or closly related, the determination of which would have, as to many of them, a like result in each case, it was arranged that the evidence submitted in any one of the cases in which testimony should be offered should, so far as applicable, material and relevant to the issues in any of the other cases, be received and considered as evidence in each of the cases. For the same reason, and because the several suits have been tried and submitted together, it has seemed to the Master that he should make and file in each suit in which evidence was offered a report identical in form but so broad as to cover all the matters relative and pertinent to each thereof and that thus the Court would be materially assisted in reaching its determination in several causes.

For convenience, the suit against the Northern Pacific Railway Company and others will be referred to as the Northern Pacific case, the suit against the Great Northern Railway Company and others will be referred to as the Great Northern case and the suit against the Minneapolis & St. Louis Railroad Co. and others as the Minneapolis & St. Louis case.

According to arrangements so made, the taking of testimony was begun and diligently proceeded with, Mr. George N. Hillman, appointed by the Court for the purpose as reporter, taking down the evidence, in the presence of the Master, and transcribing the same, as directed by order of reference, thus making and preserving a full record of the testimony and of all matters and proceedings from time to time had and taken before the Master, all of which, properly certified by the reporter as being full, true and correct, is
299 herewith presented to the Court and filed with the Clerk thereof, to be preserved as a record in each of the suits.

It soon became manifest that it would be impossible to take the evidence within the time limited in said orders by the Court, much of it being statistical and historical in character, covering a long period of years and consisting of many and voluminous tables of figures contained in exhibits requiring careful preparation and the examination of many books of account and records for their proper presentation as testimony in court and for purposes of cross-examination. It was, therefore, eventually arranged that of the nine cases so referred to the Master evidence in three thereof should first be taken and considered by the Master and reported to the Court, and to this end the suits above entitled were selected and it was mutually agreed that the other six suits so referred should rest in abeyance until those selected should have been duly reported to the Court and by it finally determined.

It was further arranged that the taking of evidence in these three cases should be proceeded with as diligently as practicable, alternating as should be most convenient and best facilitate the progress thereof, and without following any fixed order of proof, either on the part of the complainants or defendants, and that the limit as to time for taking testimony fixed by the orders of Court should be considered as removed without making application to the Court therefor,

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save that the same should be proceeded with diligently and without unnecessary delay.

The taking of testimony in the three above selected cases was not finally closed until May 26, 1910, and final submission to the Master was made on the 29th day of July, 1910.

In the Northern Pacific suit the Complainant Charles E. Perkins has died and by order of Court the suit has been continued in the name of David C. Shepard, the surviving complainant, and
300 by him an amended and supplemental bill of complaint was filed.

The suit of Henry A. James against the Great Northern Railway Company and others has been consolidated with the suit of John S. Kennedy and Henry F. Dimock against the same defendants, and by these complainants an amended bill of complaint has been filed. Said John S. Kennedy has died, his death has been suggested to the Court and the executors of his will have been substituted as parties complainant in his place.

The terms of office of defendant Edward T. Young as Attorney General and of defendant William E. Young as a member of the Railroad & Warehouse Commission having expired, an order has been duly entered by the Court substituting in each of the three cases as parties defendant George T. Simpson, who has been elected Attorney General of the State of Minnesota to succeed said Edward T. Young and Charles E. Elmquist, who has been elected a member of the Railroad & Warehouse Commission of the state of Minnesota to succeed said William E. Young.

The Attorney General and the members of the State Railroad & Warehouse Commission have filed answers to the bills and supplemental bills in all of the above entitled causes. No answer has been interposed by the defendant railroad companies.

The defendants other than the railroad companies, the Attorney General and the members of the Railroad & Warehouse Commission, in the Northern Pacific and Great Northern cases are all citizens of Minnesota and engaged in the business of receiving and shipping freight over the lines of the defendant railroad companies in said state and make use thereof for passenger transportation, and are made defendants as representatives of and to protect the rights of a large class of shippers and passengers, so numerous that it was impracticable to make all of them parties defendant. No answers have been interposed by them or on their behalf save that their rights are fully protected by the answering defendants.

301 II.

Legislation and Matters Directly Pertaining Thereto.

By Chapter 28 of the Revised Laws of Minnesota 1905, being legislation originally enacted in 1887 as amended in 1901, the general supervision of railroad and express companies doing business in the state of Minnesota as common carriers, and all public warehouses, is vested in a board of three members known as Railroad & Warehouse Commission, with power to adjust and fix rates and pre-

scribe rules and regulations for the conduct of the busine[illegible] companies, and fines and penalties are by said act pres[illegible] failure to comply therewith. The here material sections [illegible] are as follows:

"1969. Complaint that rate is unreasonable—Duty o[illegible] sion—Upon the verified complaint of any person or o[illegible] poration, private or municipal, that any tariff of rates charges, or any part thereof, or of any classification is u[illegible] unreasonable, the commission shall proceed to investigate t[illegible] alleged in such complaint, and for the purposes of such in[illegible] they may require the attendance of witnesses and the pro[illegible] books, papers and documents. If, upon the hearing, suc[illegible] rates, fares, or charges, or any part thereof, or of such cla[illegible] is found to be unequal or unreasonable, the commission s[illegible] an order stating wherein the same are so unequal or un[illegible] and shall make a tariff of rates, fares, charges and classifica[illegible] shall be substituted for the tariff so complained of. Th[illegible] made by the commission shall be deemed prima facie rea[illegible] all courts and shall be in full force during the pendency [illegible] peal or other proceedings to review the action of the com[illegible] establishing the same.

"1970. Investigation without complaint—The commis[illegible] also of its own motion investigate any matter relat[illegible]
302 management by any such carrier or warehousem[illegible] business or the reasonableness of any rates, fares, [illegible] classifications, whenever, in its judgment, the public in[illegible] quire it, and in such case the procedure shall be, as nearly [illegible] as provided upon the filing of a complaint, and the findings [illegible] in such case shall have the same effect as those made [illegible] plaint."

During the 1905 legislative session of Minnesota, a jo[illegible] tion of the House and Senate was passed, approved Apri[illegible] (Session Laws of 1905, Chap. 350), directing the Railroa[illegible] house Commission "to undertake the work of securing [illegible] ment of the existing freight rates in this state which w[illegible] more uniform system of rates throughout the state and [illegible] scale of percentages which each class rate shall bear to the [illegible] the re-adjustment to secure a substantial reduction in t[illegible] merchandise rates." At the same time funds were provide[illegible] the Commission to secure a physical valuation of all t[illegible] properties within the state.

At the same session of the legislature, by Chapter 176 [illegible] of that year, railroad companies within the state were [illegible] from changing any state rate except upon application to [illegible] mission and its consent obtained. Theretofore it had bee[illegible] tice of such carriers to increase or reduce their rates at w[illegible] previous notice and free from governmental control.

Prior to such legislation the Commission had been [illegible] supervising and regulating the methods of business of su[illegible] with reference to the furnishing of cars, adjusting min[illegible] load weights, equalizing as far as practicable rates betwee[illegible]

and between shippers so as to prevent undue discrimination between such localities and between individual shippers in the same locality, securing reasonable rates and relieving charges in particular cases, and supervising like matters arising between shippers and carriers, most of which were usually adjusted by mutual conference and compromise without formal investigation or order.

With reference to the matter of rates complaints were almost invariably made to the Commission that the rates charged by railroad companies for the transportation of freight merchandise between points in Minnesota were unreasonably high, and that the Commission should make an investigation of the schedules of rates charged by all railroad companies throughout the state doing business therein for the transportation of freight merchandise between points in Minnesota without, however, making a physical valuation of the properties employed in such service, and made up and completed full schedules of rates covering all merchandise transportations and notified such railroad companies to show cause why such schedule should not be promulgated as a maximum schedule of rates for all said railroads between points within the state.

Pursuant to such notice public hearings were had before the Commission, extending over a period of several months, in which
304 the railroad companies appeared and took an active part and submitted a large amount of testimony with reference to the matters under consideration, sufficient in the opinion of the Commission to enable it to act intelligently in the premises, and thereupon, on September 6, 1906, it made and served an order on all of said railroad companies, to take effect November 15, 1906, a true and correct copy whereof is annexed to and made a part of the bills of complaint in these cases.

Thereafter, on May 8, 1907, said Commission in like manner made and served on all the defendant railroad companies an order supplemental to said order of September 6, 1906, a copy of which is annexed to the bills of complaint herein and made part thereof, and was made for the purpose of amending such previous order so as to increase a number of intrastate rates other than the eastern terminals of St. Paul, Minneapolis and Duluth, and was in effect pursuant to a provision of the order of September 6, 1906, in the form of a note thereto to the effect that such action would be taken if further ad-

satisfactory adjustments should not be made by the railroad companies.

The volume of business and increased facilities for handling the same at certain large and important stations called terminals of the railroads centering thereat, enables the cost of transportation to and from such points and stations performed either in favor of the railroad thereat or shipper for the convenience of the railroad, to be performed at a materially less rate per mile than the rate per mile established in the schedule of rates which forms a part of the [illegible]

[illegible] distances between points neither of which are [illegible] [illegible] [illegible]

[illegible]

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enacted Chapter 232, General Laws of Minnesota for the year 1907, approved April 18, 1907, and effective by its terms June 1, 1907, fixing a new schedule of commodity rates in all respects like the schedule comprehended in the second order of the Commission excepting that the reduction in rates provided by it was 10 per cent less than that provided by the order—a copy of which legislative enactment is annexed as an exhibit to the bills of complaint respectively.

By Chapter 232 the legislature creates seven new classes,
308 numbered respectively from 11 to 17. Wheat and thirteen other articles are placed in Class 11, corn and thirty-seven other articles in Class 12, lumber and five other articles in Class 13, sheep in double-decked cars and cattle in Class 14, sheep in single-decked cars and hogs in Class 15, hard coal in Class 16, and soft coal in Class 17. There is no fixed percentage relation between the classes and no regular rate of progression of the various rates with increasing distance. In other respects, however, the method of making the schedules is similar to that adopted by the Commission in its order of September 6, 1906. The hauling charge comprehended in the rates for each class decreases with increasing distance and becomes very small for the added mileage for distances between 300 and 400 miles, which is the limit of distance covered by the Act. On Class 11 the difference between the rate for 300 miles and that for 400 miles is 1.1 cents per cwt. amounting to 2.2 mills per ton per mile; on Class 12 the difference is one cent per cwt. or two mills per ton per mile; on Class 13 it is 2.2 cents per cwt. or 4.4 mills per ton per mile; on Class 14 it is 2.2 cents per cwt. or 4.4 mills per ton per mile; on Class 15 it is 1.5 cents per cwt. or three mills per ton per mile; on Class 16 it is 34 cents per ton or 3.4 mills per ton per mile; and on Class 17 it is 18 cents per ton or 1.8 mills per ton per mile.

The schedule of rates only applies to shipments in carload lots with minimum weights definitely fixed by the Act.

Meantime and at the same session of the legislature it had passed the so-called two cents passenger law, being an Act approved April 4, 1907, effective by its terms May 1, 1907, prescribing as maximum rates for the transportation of passengers within the state two cents per mile for passengers of twelve years of age or over together with baggage not exceeding 150 pounds in weight, and one cent per mile for passengers under twelve years of age together with baggage not
309 exceeding 75 pounds in weight. The maximum theretofore had been three cents for adult passengers and 1½ cents for persons under twelve years of age.

The defendant railway companies published and put into effect the passenger rates prescribed by said Act on April 4, 1907, and were about to put into effect the commodity rates prescribed by said Act of April 18, 1907, and would have done so had they not been restrained by the writs of injunction issued in these suits. They were apparently influenced in what they did and were about to do both with respect to the Commission's orders and the Acts of the legislature by the severe penalties denounced by the statutes, which, until their invalidity in this respect was judicially determined, as has since

occurred, they feared might impose upon the officers thereof heavy fines and long imprisonments.

If said railway companies had refused to obey the orders of the Commission and the acts of the legislature aforesaid, or ceased to obey the same or either thereof, said Attorney General and said Commission were intending to take, and would have instituted proceedings, by mandamus or otherwise, against them and each of them and their respective officers and agents, to enforce obedience to said acts and orders, and said proceedings would have been so taken but for the injunctional orders issued herein.

Before the suits were brought the complainants in each of said cases demanded of the president and directors of the railroad companies of which they were respectively stockholders that they, said president and directors, cease obedience to and that they refuse to obey said respective orders and acts and each of them and that they forthwith institute proper legal proceedings to test the legality thereof. Said respective railway companies and said officers and agents thereof, respectively, refused compliance with said demands because of the aforesaid extreme fines and penalties de-
310 nounced by the statutes in case such statutes should be held legal and operative as punishments for disobedience *to* said acts and orders.

It has been established by proper and sufficient proofs that complainants were qualified to bring these respective suits and that the Court has jurisdiction of the parties and of the subject matter thereof and that said suits are not nor are either or any of them in any manner or to any extent collusive to confer on the Court of the United States jurisdiction of a case or cases of which it could not otherwise have jurisdiction.

Summarized, the reductions in rates which may be charged by railroad companies for interstate transportation within the state of Minnesota so made by its legislature and commission and challenged by these suits are briefly as follows:

1. Reduction in maximum rates on general merchandise amounting to from 20 per cent to 25 per cent. (Commissioner's order of September 6, 1906.)

2. Reduction in maximum rates on passengers amounting to 33⅓ per cent. (Session Laws of 1907, Chap. 176.)

3. Reduction in maximum rates on grain, lumber, live stock and coal amounting to 7.377 per cent. (Session Laws of 1907, Chap. 232.)

4. Reduction in in-rates in distributing stations amounting, in the Northern Pacific case, to 13.58 per cent. (Commission's order of May 3, 1907.)

III.

Authority of Commission to Make Schedule of Rates.

It is earnestly insisted by complainants that the legislature has never conferred upon the Commission authority to make the orders complained of and that the railroad companies were under no legal

compulsion to adopt the rates prescribed by them. It is claimed
311 that the extent of the Commission's power was to investigate and readjust particular rates upon complaint or its own motion on notice to the railroad companies to be affected, the investigation to be limited to the matter complained of, but that it was without authority to make general and comprehensive schedules of rates covering all classes of merchandise and commodities upon all railroads and between all points in the state, and the case of Siler v. Louisville & Nashville Railroad Company, 213 U. S. 175, is confidently relied upon to support this position.

Were it not for the joint resolution of the legislature of April 6, 1905, before referred to, the case cited would seem to support complainants' contention. While it is conceded that such resolution has the force of law, they insist, however, that it authorizes the Commission only "to undertake the work of securing a readjustment of the existing freight rates in this state which will give a more uniform system of rates throughout the state and a uniform schedule of percentage which each class rate shall bear to the first class, the readjustment to secure a substantial reduction in the existing merchandise rates," and that this resolution simply contemplates the preparation of rate schedules in furtherance of the desired end therein expressed to be thereafter put in force by legislative enactment.

Authority to undertake a work without words of limitation includes the prosecution thereof until completion, and especially so in view of the language here used designating just what such work is to effect. The resolution clearly takes the case out of the operation of the law as declared in the case above cited.

It does not seem here material, however, aside from the question of interference, hereafter to be considered, whether the orders complained of are void or valid, provided the rates thereby prescribed are in fact just and reasonable. They have been actually adopted and regardless of the influences which may have led to their adoption, if they are reasonable in fact the complainants would have no standing in a court of equity in attempting to compel a
312 return to excessive rates. If there had been no allegations in the bill that the merchandise rates prescribed by the Commission and put in by the railroad companies were unreasonable and confiscatory, it seems clear that as to such rates no case would be stated calling for the intervention of a court of equity. If put in with authority of the state legislature, as is here held, but are in contravention of the commerce clause of the Constitution or the Act of Congress and therefore unlawfully discriminate against interstate commerce, it is doubtless competent for the Court to adjudge their invalidity and compel the defendant company to return to its former rates or to such rates as shall prevent such discrimination—a matter to be hereafter determined. The cases of Missouri, Kansas & Texas Railway Company, et al., v. Love, 177 Fed. Rep. 493, and In re Arkansas Railway Rates, 163 Federal Reporter 141, suggest the propriety of such course.

IV.

Effect of Prescribed Rates if Confiscatory as to One Line of Railway and Not Another.

It has also been urged that if the prescribed rates or any of them are confiscatory as to any of the railroad companies it operates to invalidate such rates even as to those companies which would through them secure a reasonable return on their investment.

This contention was raised and denied in the Missouri rate case and should be followed regardless of the Master's views. He believes, however, that the question was there correctly decided. Whether invalid provisions in a law shall operate to invalidate the whole law turns upon the question as to whether the legislators would have enacted the law without such invalid provisions, or, in other words, whether the invalid provisions were a considera-
313 tion for and influenced their action. If the legislators would probably not have acted at all if the invalid features of the law had been first eliminated, then the whole law falls, otherwise not. If, in the legislation here under consideration, a provision had been inserted that the same should not be operative as to any railroad company whenever the effect thereof would confiscate the property of such company, its validity could not be questioned on such ground. In view of the end sought, there can be no doubt that the insertion of the provision suggested, if deemed necessary for its validity, would have had no influence in preventing legislation in such form. The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the legislature in its action along the lines taken by it. This objection must be overruled.

V.

Interference With Interstate Commerce.

A question of first importance is raised by the complainants in their contention that the prescribed rates discriminate against and operate as a regulation of interstate commerce, and a large amount of testimony has been offered by them bearing upon this phase of the cases. In their view upon the question so raised it is wholly immaterial whether the prescribed rates are reasonable or not. They contend that State-made rates must be made to conform to and not be relatively less than or unduly discriminate against interstate rates, and that the reasonableness of such interstate rates must be determined in the first instance by Congress or its administrative officers, the Interstate Commerce Commission, acting under the Interstate Commerce Statute.

The orders of the Minnesota Commission and acts of the
314 legislature are strictly limited to state commerce, so far as the language used is concerned, and in terms have no reference to commerce without the state, nor do they apparently seek

to control interstate rates. It has been held, however, that "If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid whatever may have been the purpose for which it was enacted, and although the company may do both state and interstate business. Such is an established rule of constitutional construction, as the adjudged cases abundantly show." (Telegraph Co. v. Kansas, 216 U. S. 1.

It must be true that there cannot be a dual control in so important a regulation as the fixing of rates, the same being of vital importance to the continued existence of the company as a going concern, and if state and interstate rates must bear a certain relation to each other, the standard must be fixed by the sovereign power, the Congress, which under the Constitution is given power to regulate commerce among the states. A power enumerated in the Constitution, with all the incidents thereof, is supreme and cannot be in any manner limited by state action. Subject to such power, so conceded to Congress, all rights are reserved to the State, including the right to regulate its internal commerce. "It needs no argument to show that the commerce with foreign nations and between the states, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by state legislation." (Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196.)

"It is now settled in this court that a State has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is
315 done amounts to a regulation of foreign or interstate commerce." (Stone v. Farmers' Loan & Trust Co., 116 U. S. 307.)

In Ames v. Union Pacific R. R. Co. (64 Fed. Rep., p. 172), where this question seems to have been raised by counsel for the defendant, Mr. Justice Brewer said:

"Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates, and make them conform to the local rates prescribed by the Statute, but surely there is no legal compulsion. The Statute of the States does not work a change in interstate rates, any more than an Act of Congress prescribing interstate rates would legally work a change in local rates. Railroad Companies cannot plead their own convenience, or the effects of competition between themselves and other companies, in restraint of the otherwise undeniable power of the State."

On appeal, this statement of the law, not in form, but in effect, is approved by Mr. Justice Harlan.

The matter of discrimination, in the instant cases made so prominent, does not seem to have been called to the attention of the

Court, nor does there seem to have been any evidence in the case bearing upon the question. Here the complainants do not claim that "as a matter of law" local rates necessarily interfere with interstate rates or that companies can "plead their own convenience or the effect of competition between themselves and other companies in restraint of the otherwise undeniable power of the State." What they do insist is that the evidence presented in these cases differentiates them from the Ames case and shows that the prescribed rates if observed are so far-reaching in their effect as to compel disobedience to the inhibitions of the Interstate Commerce Act against discrimination, which in terms forbids a carrier "to subject any particular * * * locality * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever," and that such discrimination, enforced as it is by state action, if not denounced by the Act of Congress, is violative of the commerce clause of the Constitution, having in mind the purposes of such provision and the historical conditions giving rise to its adoption.

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The State claims that the above section of the Federal Act referred to does not prohibit discrimination brought about in conducting state commerce because of the proviso appended to the first section of the act, as follows: "Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state and not shipped to or from a foreign country or to any state or territory, as aforesaid."

Also because it is beyond the power of Congress under the Constitution of the United States to legislate as to or to regulate or prohibit the making of rates by a State as to transportation beginning and ending and wholly within the State.

This would seem to be in effect a declaration that the act is not intended to apply to any subject outside of Federal control. The primary purpose of the act, as has been repeatedly held, is to prevent discrimination, and it would seem to be a misconstruction of the proviso to hold that it authorized or permitted in its most vicious form that which in another form it so strictly inhibits, especially in view of the fact that there can be no question of the competency of Congress to prevent discrimination between interstate localities. It certainly should not be construed as conferring upon a state power or permission to so regulate commerce within its borders as to hamper or be a burden upon interstate commerce and operate as an unrighteous discrimination against localities in other states. It was such discrimination which gave rise to the commerce clause of the Constitution and it is not to be supposed that Congress intended to give the carrier, or the State acting upon it, a free hand with respect to state commerce without regard to its effect upon commerce between the states. It could not do so if it would. A state has no right to burden interstate commerce for the benefit of its own business enterprises or to subject it to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

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"It is of the last importance that the freedom of interstate com-

merce shall not be trammeled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States. While the general rights of the states to regulate their strictly domestic affairs is fundamental in our constitutional system and vital to the integrity and permanence of that system, that right must always be exerted in subordination to the granted or enumerated powers of the general government and not in hostility to rights secured by the supreme law of the land." (Western Union Telegraph Co. v. Kansas, 216 U. S.)

That such burden may be imposed by state rate regulations is well illustrated in the case of Saunders & Company v. Southern Express Company, decided by the Interstate Commerce Commission January 10, 1910, (Opinion No. 1278), where the facts showed that certain state rates put in by the Alabama Railroad Commission under legislative authority discriminated directly and substantially in favor of the City of Mobile, Alabama, against the City of Pensacola, Florida. In delivering its opinion the Commission says:

"The carriage of traffic by a common carrier for one community or one set of shippers at less than it carries the same traffic for a like distance, and under substantially similar transportation conditions, for another community or another set of shippers is not only in contravention of fundamental right and justice but is essentially iniquitous. If such a discrimination is practiced by a common carrier as between communities or different sets of shippers within the same state and on traffic moving only within the state, redress may usually be had under the state laws. On the other hand, if
318 an interstate carrier is guilty of such a discrimination with respect to interstate traffic, redress may be had under the act to regulate commerce. But when a carrier, as in this case, serves two communities similarly situated, by hauling the same traffic under similar conditions from a point of origin to destinations in the same state and also to the same destinations from an interstate point of origin, it is not altogether clear that existing legislation affords redress against a discrimination, as between the two points, when resulting from an order by the state commission. But unless some such power is lodged somewhere under appropriate legislation, it is evident that State-made rates, if established in pursuance of a narrow or selfish local policy, may not only hinder and harm and burden interstate traffic and interstate interests, but may, if adjusted with that end in view, take from a point in another state a business that naturally belongs to that point or in which it is entitled at least to participate, on the basis of equal rates and equal opportunity. * * *

"The defendant is one concern and one instrument of commerce operating through and across those invisible lines that separate the several states from one another. It has but one corps of officers and employees and but one equipment. Its only object is to serve all the shippers in the territory through which it passes. That object is legitimately effected only when it serves its whole constituent public upon substantially similar terms when the conditions are substantially similar. If it voluntarily makes a distinction between

traffic that moves from a point in one state to a point in another state and traffic that moves between points in the same state, and gives to the state traffic lower rates than to the interstate traffic moving under substantially similar conditions, it imposes upon the latter a burden that it ought not justly to bear, and it discriminates against one community in favor of another. The same burden and discrimination follow if instead of voluntarily so adjusting its rates it is compelled so to adjust them by the action of a state commission. It may be that this anomaly in transportation necessarily results from our dual system of government and that a remedy is beyond reach without some amendment to the national constitu-
319 tion. On principle it is clear that a carrier operating through two or more states is but one vehicle of commerce, and all traffic moved by it, whether state or interstate, ought, when the general transportation conditions are the same, to bear its just proportion of the cost of operation and ought to yield no more and no less than its just proportion of the revenues of the carrier. Any other theory is fundamentally inequitable, illogical and unreasonable. It may be, but on that point we express no opinion, that the Congress may constitutionally protect interstate commerce, as well as the carriers that are engaged in interstate transportation, by requiring that any state traffic moved by such a carrier shall bear its just proportion of the cost of operation and yield its proper proportion of profit to the carrier; and that with such an end in view it may authorize this Commission to fix minimum rates, at least, for state traffic when moved by carriers engaged also in interstate transportation; or that it may provide that no carrier engaged in the interstate transportation of passengers or property may at the same time carry state traffic at rates that are less than the rates exacted by it for interstate carriage of like distance and under like transportation conditions. It has, however, not attempted any such legislation, and whether such an enactment would stand the test of scrutiny by the courts under the constitution as it now stands, and if so, whether it would be desirable from the standpoint of a broad public policy, are questions that must ultimately be determined by the legislative power and therefore cannot profitably be discussed by the Commission in this proceeding."

The Commission were of opinion that the Federal law under which they derived their power did not justify them in interfering with the State-made rates although they found that they operated as a burden upon interstate traffic. In view of this finding it would seem to have been competent for the Commission to require the carrier to ignore the order of the State Commission on the ground that in its operation it violated the commerce clause of the Constitution. In a matter of so much doubt, however, it was a proper exercise of adminis-
320 trative discretion not to compel the carrier to disregard the State-made rate until its validity and their own power in the premises had been judicially determined, and especially is this true in view of the fact that in that case the State was not represented and the action of its commission would have been condemned without a hearing on the part of the State. In the cases before the Master, the

validity of the prescribed rates is directly in question, not merely as a matter of legal construction, but upon voluminous evidence, with all interested parties present, and the force and effect of the Federal Act and of the commerce clause can be determined in the light of the facts disclosed by such evidence. The facts in this regard are as follows:

1. The Northern Pacific Railway Company is a corporation and is a common carrier owning, maintaining and operating lines of railway exclusive of lines in Manitoba and its interest in the Spokane, Portland & Seattle railroad comprehending on the 30th day of June, 1908, approximately 7,695.80 miles of track, of which 1,625.20 miles are in Minnesota. Its main line of railway extends from Superior, Wisconsin, and Duluth, Minnesota, which are situated side by side at the westerly end of Lake Superior, and from the cities of St. Paul and Minneapolis, Minnesota, in a westerly direction through the states of Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the cities of Seattle, Tacoma and Portland on the Pacific coast. Between Duluth and other points in Minnesota reached by it the company has both a local and an interstate line of railway, the interstate line passing through Wisconsin and joining the state line at Carlton, Minnesota, twenty miles westerly from Duluth. The Company has a branch line which leaves the main line at Manitoba Junction, 225 miles westerly from St. Paul, and extends in a northerly direction, leaving the state of Minnesota at East Grand Forks, Minnesota, 320 miles from St. Paul and entering the state of North Dakota at Grand Forks, North Dakota, which is at the same
321 official distance from St. Paul, and running to Pembina, North Dakota, which is on the border line between North Dakota and Manitoba and is 414 miles from St. Paul. It has another branch line which leaves the main line at Wadena, Minnesota, 160 miles westerly from St. Paul, and extends in a westerly direction, leaving the state of Minnesota at Breckenridge, Minnesota, 237 miles from St. Paul, and entering the state of North Dakota at Wahpeton, North Dakota, 238 miles from St. Paul, and running thence to Oakes, North Dakota, 311 miles from St. Paul. The main line of the company leaves the state of Minnesota at Moorhead, Minnesota, 250 miles from St. Paul, and enters the state of North Dakota at Fargo, North Dakota, which is 251 miles from St. Paul.

2. The Great Northern Railway Company is a corporation and is a common carrier owning, maintaining and operating lines of railway comprehending on the 30th day of June, 1908, 8528.98 miles of track, of which 2,779.30 miles are in Minnesota. Its main lines of railway extend from Superior, Wisconsin, and Duluth, Minnesota, in a westerly direction through the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the cities of Seattle and Portland. Its line between Duluth, Minnesota, and other points in Minnesota reached by it passes through the state of Wisconsin. Between Minneapolis and Larimore, North Dakota, the Company has two main lines of Railway. One of these lines extends from Minneapolis by way of Willmar, Minnesota, leaving the state of Minnesota at Breckenridge, Minnesota, 214 miles

from St. Paul, and entering the state of North Dakota at Wahpeton, North Dakota, 215 miles from St. Paul, and running thence to Larimore, 345 miles from St. Paul. The other of these lines extends from Minneapolis by way of Barnesville, Minnesota, leaving the state of Minnesota at Moorhead, Minnesota, 241 miles from St. Paul, and entering the state of North Dakota at Fargo, North Dakota, 242 miles from St. Paul, and running thence by way of
322 Grand Forks, North Dakota, to Larimore, 348 miles from St. Paul.

The main line of the Company between Duluth and Larimore runs by way of Crookston, Minnesota, leaving the state of Minnesota at East Grand Forks, Minnesota, 296 miles from Duluth, and entering the state of North Dakota at Grand Forks, North Dakota, at the same official distance from Duluth, and running thence to Larimore, 325 miles from Duluth.

The Company has a branch line of railway wholly within the state of Minnesota which leaves the main line at Barnesville and extends northerly to Noyes, 391 miles from St. Paul.

It has another branch line which leaves the main line at Willmar and extends in a southwesterly direction, leaving the state of Minnesota at Jasper, Minnesota, 218 miles from St. Paul, and entering the state of South Dakota, and running by way of Sioux Falls, South Dakota, to Yankton, South Dakota, 311 miles from St. Paul, and to Sioux City, Iowa, 327 miles from St. Paul.

It has another branch line which leaves the Willmar main line at Benson and extends in a southwesterly direction, leaving the state of Minnesota at Nassau, Minnesota, 173 miles from St. Paul, and entering the state of South Dakota and running to Huron, South Dakota, 294 miles from St. Paul.

3. The Minneapolis and St. Louis Railroad Company is a corporation and is a common carrier owning, maintaining and operating lines of railroad comprehending on the 30th day of June, 1906, 632.06 miles of track and operating under lease or trackage rights lines of railroad comprehending on the same date 396.43 miles of track. Its main lines of railway extend from St. Paul and Minneapolis, Minnesota, westerly by way of Winthrop, Minnesota, to Le Beau, South Dakota, from St. Paul and Minneapolis southwesterly by way of Winthrop, Minnesota, to Storm Lake, Iowa, and
323 from St. Paul and Minneapolis southerly by way of Albert Lea, Minnesota, to Des Moines, Iowa.

4. The whole of the railroad properties of each of said companies have for many years constituted and still constitute respective single systems and have been and are operated by each of said companies as such. The cars, engines and supplies of each company customarily have been and are used upon its system wherever required and without regard to whether the business in which they have been or are employed has been or is interstate business or business local to a state. It always has been and is impracticable and apparently is impossible to operate the property of either of said companies situate in any state separately or to carry on transportation of passengers or freight local to a state separately from interstate passengers or freight touching

that state. Each of said companies customarily has carried and does carry interstate passengers and passengers local to a state on the same train and in the same car and interstate freight and freight local to a state on the same train and, if less-than-car-load freight, in the same car; and they could not and cannot practicably or in the exercise of any fair economy whatsoever do otherwise. (See Maquire's testimony in G. N. Case, p. 797.)

5. By far the larger proportion of the business of each of said companies is interstate; and by far the larger proportion of the business of each of said companies within the state of Minnesota is interstate.

For example, for the year 1906, taken as a sample year in the testimony, the freight business of the Northern Pacific Company local to the state of Minnesota was but 2.67 per cent of the Company's entire freight business and but 12.33 per cent of the Company's freight business touching the state; its passenger business local to the state of Minnesota was but 5.79 per cent of its entire passenger business and but 67.21 per cent of its passenger business touching the state. (Ex. 54 Johnson.)

324 6. For many years the conditions attending the transportation of passengers, of merchandise covered by the Order of September 6, 1906, or of commodities covered by Chap. 232, Gen. Laws 1907, have been and they still are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota, North Dakota and South Dakota reached by the lines of railway operated by either of said companies; and whether such transportation has been or is of business local to a state, or interstate between any two of such states. (See Baird's testimony, N. P. Case, pp. 1436 to 1439, and pp. 1476-7; and Maquire's testimony, G. N. Case, pp. 792 to 795.)

Each of said companies had, prior to the taking effect of the Order of September 6, 1906, and the two-cents maximum passenger fare law, maintained an equable, that is, a relatively fair basis of rates for merchandise and passengers the transportation of which touched Minnesota without regard to whether the transportation was state or interstate between Minnesota and an adjoining state, and each of them still maintains such equable basis of rates for the transportation of commodities covered by Chap. 232, Gen. Laws 1907, regardless of whether it is local within Minnesota or interstate between Minnesota and an adjoining state.

Any substantial change in the basis of rates or in any particular rates due only to the fact that the transportation was interstate or that it was local to a state would have been actual, undue and unjust discrimination in fact; and any substantial difference in rates for the transportation of passengers, merchandise or commodities maintained by either of said companies as between traffic local to the state of Minnesota and traffic which goes between the state of Minnesota and either of its neighboring states will constitute actual, undue and unjust discrimination in fact. (See N. P. Case, Elliott, p. 1320-1, and Baird, p. 2198-9.)

7. Superior, Wisconsin, and Duluth, Minnesota, are situ-
325 ated side by side at the western extremity of Lake Superior. Each is an important business center. Conditions attending transportation to and from either of them are the same as to or from the other. The railroad companies reaching them have always accorded them and do accord them like rates in and out. They ship and receive the same kinds of freight and to and from the same localities. Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates. The propriety of a parity of rates to and from these localities has always been recognized.

For the same reasons, each of the couples of cities composed of Grand Forks, North Dakota, and East Grand Forks, Minnesota, Fargo, North Dakota, and Moorhead, Minnesota, and Wahpeton, North Dakota, and Breckenridge, Minnesota, have always been accorded by the railway companies serving them like rates in and out. The cities in each pair depend upon the same carriers, have substantially the same producing and consuming markets and receive and ship the same kinds of articles. Any substantial difference in rates as between the cities composing each pair would seriously damage if not wholly destroy the commerce of the city given the higher rate and would be an undue and unjust disadvantage in fact to it and an undue and unjust preference and advantage in fact for its neighboring city. (See Baird's testimony, N. P. Case, p. 1456-8.)

Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the Company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the Company's property in Superior.

8. The schedule comprehended within the Order of September 6, 1906, prescribed maximum rates for transportation within the state of Minnesota which were from 20 per cent to 25 per cent
326 lower than those theretofore established by the Northern Pacific and Great Northern companies, and maintained by them up to the time of the taking effect of the Order for transportation in Wisconsin, Minnesota and North Dakota regardless of whether such transportation was local to either state or interstate between any two of them. If these companies after the installation of the rates prescribed by the Order for transportation within Minnesota had concontinued to maintain the former rates for transportation between Minnesota and an adjoining state, the result would have been serious discrimination against localities in the neighboring states.

For example, prior to the taking effect of the Order the rate maintained by the Northern Pacific on a 200-pound barrel of flour (fourth class) from Minneapolis to Fargo was 68 cents. The schedule fixed 54.2 cents as a maximum from Minneapolis to Moorhead. This is a fair example of the difference between the former interstate rates for transportation between Minnesota and an adjoining state and the rates prescribed by the Order for transportation within the state. (Ex. 41 Baird.)

On the same day that the Northern Pacific Company installed its rates in Minnesota as prescribed by the Order, it reduced its interstate rates between Superior and points in Minnesota to an exact parity with its rates between Duluth and other points in Minnesota, its interstate rates between Grand Forks, Fargo and Wahpeton, North Dakota, and Minnesota points to an exact parity with its rates between East Grand Forks, Moorhead and Breckenridge, respectively, and other Minnesota points and its interstate rates between Superior and Grand Forks, Fargo and Wahpeton, respectively, to an exact parity with its state rates between Duluth and East Grand Forks, Moorhead and Breckenridge, respectively. The reduction was substantial. For example, the reduction in the rate on first class from Superior to Fargo was from 65 cents per cwt. to 54.1
327 cents per cwt.; and on fifth class from 27 cents to 21.7 cents per cwt. (Ex. 41 Baird.)

These reductions were compelled by the necessary and direct effect of the operation of the Order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth; Fargo, Grand Forks and Wahpeton could not have competed with Moorhead, East Grand Forks and Breckenridge, respectively, nor could Superior have transacted business successfully with Fargo, Grand Forks or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the Order between these localities.

On the same day that the Northern Pacific made these reductions in its interstate rates the Great Northern made similar reductions although its business between Duluth and Minnesota points is interstate. The reason for its reductions from Duluth was to preserve the relation in rates from Duluth which had always existed between localities on the Great Northern and localities similarly circumstanced on the Northern Pacific, and also to meet the reduced rates on the Northern Pacific line. (Maguire, p. 815, G. N. Case.)

9. Moorhead, Minnesota, Fargo and Bismarck, North Dakota, Billings and Butte, Montana, are so-called "jobbing centers." Prior to the taking effect of the Order of September 6, 1906, they had always been accorded rates by the Northern Pacific Company which would allow them to compete in distribution of merchandise with their nearest neighbors and with St. Paul and Minneapolis and Duluth. The sum of carload rates from St. Paul, Minneapolis and Duluth to these centers and the less-than-carload rates out from these centers to the territory geographically tributary to them respectively had been such as to compare favorably with rates in and out
328 of their local competitors as well as with less-than-carload rates from St. Paul, Minneapolis and Duluth into the territory geographically served by them respectively. The Order of September 6, 1906, as supplemented by the Order of May 3, 1907, substantially reduced carload rates from Duluth, St. Paul and Minneapolis to Moorhead. This reduction would have given Moorhead a substantial advantage in territory accessible to its jobbing industry

not only as against Fargo unless carload rates to Fargo should have been similarly reduced, but also as against Duluth, St. Paul and Minneapolis unless less-than-carload rates from these points to points geographically accessible to Moorhead, which included a considerable territory in North Dakota, should have been proportionately reduced. This reduction unless accompanied by a corresponding reduction in carload rates to Fargo from the eastern terminus would have served to build up Moorhead at the expense of Fargo and therefore to discriminate unduly and unjustly against Fargo as a matter of fact, and would destroy the relation in rates which had theretofore existed between the sum of carload rates into Moorhead and less-than-carload distributing rates out on the one hand, and less-than-carload distributing rates from Duluth, St. Paul and Minneapolis to localities accessible to Moorhead on the other. If Fargo were protected as against Moorhead by a like reduction in carload rates, it would have an advantage and preference over Bismarck in territory common to them both and an advantage over the eastern terminals in territory common to Fargo and then, unless carload rates from the eastern terminals to Bismarck and less-than-carload rates from the eastern terminals to the territory accessible to Fargo should be correspondingly reduced; and this advantage would constitute an undue and unjust preference to Fargo as against Bismarck, which competes in certain territory with Fargo, unless rates on carload lots from the eastern terminals to Bismarck should be correspondingly re-
329 duced. And so on, from distributing point to distributing point.

10. Every rate comprehends two terminal charges, the initial and the final, and a distance haulage charge. It is a cardinal principle of rate-making that a rate for a longer distance should be proportionately smaller than one for a shorter distance; that is to say, that a rate for 500 miles should be less than twice the rate for 250 miles, if conditions of transportation be the same. Because the rate for 250 miles includes two terminal charges, and if the rate for 500 miles were twice the rate for 250 miles, it would manifestly include the equivalent of four terminal charges. Even if the haulage charge were the same per mile for a haul of 500 miles as for a haul of 250 miles, which is contrary to the rule generally applied in rate-making, the rate per ton per mile for the 500 miles should be less than for the 250 miles because in the one case the terminal charges would be spread over 500 miles and in the other over only 250 miles.

Comparison of rates at present maintained by the Northern Pacific Company from St. Paul to various stations in North Dakota and Montana with those established by the Order of September 6, 1906, and now maintained by the Company between St. Paul and Moorhead discloses that the Commission-made rates from St. Paul to Moorhead are in general substantially less than the proportion of the presently maintained interstate rates of the Company to these various points in North Dakota and Montana, based on the mileage in Minnesota as compared to that of the entire haul. For example, the present rate maintained by the Northern Pacific on Class E. merchandise from St. Paul to Miles City, 743 miles from St. Paul, is 39 cents per cwt.; the rate to Moorhead, based on the proportion of

39 cents, which the mileage of the haul in Minnesota is of the entire haul, is 13 cents. The Order allows only 11 cents per cwt. from St. Paul to Moorhead, in which of course are included two full terminal charges. Maintaining rates comparison of which shows this
330 result, involves substantial, undue and unjust discrimination in fact against the interstate localities. (Ex. 46, Baird, N. P. Case.)

11. After the installation by the Great Northern and the Northern Pacific companies of the rates prescribed by the Order of September 6, 1906, it appeared that the sum of the locals from St. Paul to Moorhead and from Moorhead to many ploints in North Dakota was less than the theretofore established and maintained interstate rates from St. Paul to these points in North Dakota. Both companies thereupon established and now maintain rates from St. Paul to these North Dakota points as a rule no greater than the sum of the locals on Moorhead, but which are substantially lower in general than the interstate rates maintained by them at the time of the taking effect of the Order. Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of the locals based on the state line would have involved undue and unjust discrimination in fact.

It was suggested on the trial by solicitors for defendants that these reductions were made by the companies upon complaint of merchants of St. Paul, Minneapolis and Duluth; but the uncontradicted testimony of the chief witness for the complainants on this point was that the reduction was made in order to protect the power of the railroads to do interstate business,—to remove the ability of the shippers to ship to Moorhead and trans-ship to the point of destination. As a matter of fact, the reasons for such reduction were to prevent trans-shipment at Moorhead in order to take advantage of the lower sum of the locals; to retain on its line traffic which was liable to reach Moorhead over other lines by reason of competition; and as to less-than-carload lots to enable jobbers in the Twin Cities and Duluth to compete with Moorhead and Fargo in territory which otherwise the latter would have exclusively occupied by reason of their closer proximity thereto, an advantage to which it cannot be said such
331 jobbers were entitled although they had been able theretofore to participate in such business.

12. It is one of the fundamental dogmas of rate-making that the haulage charge per mile shall not increase with increasing distance if conditions be the same. The Order of September 6, 1906, promulgates a schedule which for first class merchandise, for example, allows a terminal charge of 11.02 cents per cwt. and a haulage charge of .98 cent per five miles up to 200 miles, then a haulage charge of .98 cent per ten miles for added distance up to 400 miles, and then a haulage charge of .98 cent per twenty miles up to 500 miles—the limit of distance covered by the Order. Both the terminal charge and the haulage charge allowed for the other merchandise classes are a fixed percentage of those allowed for First. Under this schedule a hundred pounds of merchandise transported by the Northern Pacific from St. Paul to Moorhead, 248 miles, has been hauled for 48

miles, at the rate of .98 cent per ten miles when Moorhead is reached. If this same haulage charge of .98 cent per ten miles be applied for the remaining distance of the haul from St. Paul to Spokane, Washington, 1,510 miles from St. Paul (which is taken as a fair example merely for the illustration of this principle), it would produce a rate from St. Paul to Spokane on First class merchandise of $1.79 per cwt. The Interstate Commerce Commission in the Spokane Rate Case has fixed the reasonable rate on First class merchandise from St. Paul to Spokane of $2.50. Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time, necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the State carried on over the same rails and under the same conditions and involves necessarily undue and unjust discrimination in fact against
332 localities westerly of the Minnesota-North Dakota boundary line. Defendants' solicitors, however, insist that in extending the State-made rate beyond the boundary line, if an equable basis is sought, the ton-mile charge for such extension must be found by dividing the total charge to such line by the distance to it from the point of origin, which would considerably increase the extension rate beyond the State line over the rate if extended by the method suggested by complainants. This method suggested by defendants is not the principle, however, on which the State schedule of rates is constructed, and even so it does not give traffic carried on the extended interstate rate the benefit of the spread of the two terminal expenses over the longer haul.

13. For more than twenty-five years the Northern Pacific Company has maintained an equal basis of rates on merchandise between its eastern terminals and Butte and its western terminals and Butte and between its eastern terminals and localities intermediate between them and Butte and between its western terminals and localities intermediate between them and Butte. Other railroads reaching Butte have during the same time maintained like rates to Butte from Sioux City, Omaha, St. Joseph and Kansas City on the east, and from San Francisco, Sacramento and Los Angeles on the west. Butte has been as the hub of a wheel with spokes representing equal rates to these various cities. Industries have been born and have grown in reliance upon this parity of rates. Intermediate points have had rates fixed in proportion with the Butte rates. Competition of markets and of carriers has brought this about. The Northern Pacific Company cannot maintain its present Commission-made rates between its eastern terminals and Moorhead and at the same time, its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate
333 stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western ter-

minals to Butte and intermediate stations. If, then, the Northern Pacific maintains the Commission-made rates between its eastern terminals and Moorhead it must either substantially discriminate in fact or destroy the general relation of rates which has existed for many years in the territory between the Missouri river and the Pacific coast.

14. Prior to the taking effect of the Order of September 6, 1906, the Great Northern and Northern Pacific Companies had established joint through rates in connection with other carriers from all localities easterly or southerly of the state of Minnesota to all points in Minnesota westerly of St. Paul and Minneapolis reached by them respectively, and these rates were in force at the time of the taking effect of the Order. After the rates prescribed by the Order were installed, the sum of the locals on St. Paul from all localities southerly and easterly of Minnesota to all localities in Minnesota westerly of St. Paul and Minneapolis reached by these companies was substantially less than the then existing interstate rates between such localities southerly or easterly of Minnesota and such Minnesota localities. Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities easterly and southerly of Minnesota and an unjust and undue preference and advantage in fact for St. Paul; because merchandise could have been shipped from all localities easterly and southerly of Minnesota to St. Paul on the theretofore established and then existing interstate rates and distributed from St. Paul to all points westerly of St. Paul and Minneapolis on the rates prescribed by the Order for substantially less charges in the aggregate than would have been incurred for the through haul under the then existing through interstate rates. In order to avoid this discrimination the com-
334 panies forthwith after the taking effect of the Order withdrew the then existing interstate rates and established a new tariff of through rates which were no higher than the sum of the locals on St. Paul. For example, the former through rates from Chicago to Wadena, Minn., on First class merchandise was $1.09 per cwt. The sum of the locals on St. Paul after the taking effect of the Order was $1.004. The present through rate is $1.004, being a reduction of 8.6 cents per cwt. (Ex. 44 Maguire, pp. 818-20, G. N. Case.)

15. The proof is clear that conditions attending transportation are substantially the same in Minnesota and North Dakota and whether the transportation is local to either state or interstate between them. If unjust and undue preference or advantage in rates is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern Companies have, prior to the taking effect of the Order, maintained an equable basis of rates in the territory which these two states compose without regard to state lines. For example, the interstate rates from Moorhead, Minnesota, westerly into North Dakota have been the same as from Moorhead easterly into Minnesota and no conditions have existed or do exist which justify a different basis of rates for eastbound to that for westbound transportation.

Prior to the installation of the rates prescribed by the Order the rate per cwt. of First Class merchandise for 100 miles, for example, out of Moorhead, whether westerly into North Dakota or easterly into Minnesota, was 43 cents. For transportation westwardly into North Dakota this rate from Moorhead still exists. The rate prescribed by the Order and now in effect from Moorhead eastwardly into Minnesota is per cwt. of First Class merchandise 30.6 cents. This disparity of rates for transportation under substantially similar conditions and which disparity increases as distance easterly from Moorhead increases constitutes an undue preference and ad-
335 vantage to the eastwardly localities in Minnesota and a corresponding prejudice and disadvantage to the interstate westwardly localities in North Dakota. If the Companies maintaining this relation of rates, unfair in fact, are to continue to maintain the rates prescribed by the Order, they can remove the existing undue and unjust discrimination in fact against the interstate localities in North Dakota only by reducing the interstate rates from Moorhead to localities in North Dakota to a substantial parity with those maintained from Moorhead to localities at like distance in Minnesota. (Ex. 35 Baird, N. P. Case.)

16. The Great Northern Company owns and operates a branch line to Noyes, 391 miles from St. Paul. The line between St. Paul and Noyes is wholly within the state of Minnesota. Conditions attending transportation of merchandise from St. Paul to Noyes are at least no more favorable than those attending transportation from St. Paul to localities in North Dakota on the main line of the Company and equally distant from St. Paul. All that is claimed by complainants is that conditions are substantially alike. Prior to the taking effect of the Order the rate per cwt. of First Class merchandise for transportation on the Great Northern from St. Paul to a locality 390 miles distant and situate either in Minnesota or in North Dakota was 96 cents. The Commission-made rate from St. Paul to Noyes is 68.8 cents. Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in fact. (Ex. 46 Maguire; testimony, Printed Record, p. 796, G. N. Case.)

17. The Order of September 6, 1906, prescribes a basis of rate-making. Its schedule is framed to secure a fixed relation between rates on the same class for different distances, a fixed relation between rates for the different classes for the same distance, and therefore manifestly a fixed relation between rates for different classes for different distances. These relations are so stable that, given
336 the rate for any distance on any class, the rate for any other distance on any other class may be determined by one who knows the method upon which the schedule is constructed. An avowed purpose of the schedule is to secure equality of rates.

The Great Northern Company operates a line from St. Paul to Sioux City, Iowa, 327 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 218 miles from St. Paul—the distance from St. Paul of Jasper, the border Minnesota town.

It operates another line from St. Paul to Huron, South Dakota, 294 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 173 miles from St. Paul—the distance from St. Paul of Nassau, the border Minnesota town. Between St. Paul and Wilmar, Minnesota, 102 miles from St. Paul, these lines are identical.

Under the schedule prescribed in the Order, the progression of the rate—the haulage charge with increasing distance—breaks in two at a distance of 200 miles. That is to say, the haulage charge for First Class (and for other classes in fixed relation) having been allowed at .98 cent for each five miles up to 200 miles is cut to .98 cent for each ten miles beyond 200 miles and up to 400 miles.

When the line between Minnesota and South Dakota is reached on the St. Paul-Sioux City line, the progression of the rate prescribed by the schedule is .98 cent per ten miles for First Class.

When the line between Minnesota and South Dakota is reached on the St. Paul-Huron line, the progression of the rate is .98 cent per five miles of haul.

It is apparent that unless undue and unjust discrimination shall exist in the rates on one of these interstate lines as compared with the other, the same basis of making the rate, the same rela-
337 tion between rates for different distances and different classes must be maintained on one line as on the other, and that notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the state of South Dakota, the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached and that break was made within the state of Minnesota.

The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the state of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates. (See Maguire's testimony in G. N. Case, p. 795-6.)

18. Since the taking effect of the Order of September 6, 1906, both the Great Northern and the Northern Pacific Companies have reduced their interstate rates on merchandise from their eastern terminals in Wisconsin and Minnesota to all localities in general in North Dakota. Such reductions have been made as a rule only to such extent as was necessary to remedy the discrimination resulting from the fact that the sum of the local rates from the eastern terminals to the border towns of Minnesota and from such border towns to the several localities in North Dakota was less than the theretofore established and then existing through interstate rates from the eastern terminals to the several respective localities in North Dakota and not to such extent as to remedy the discrimination resulting from the fact that in most cases the general basis of rates on merchandise for traffic within Minnesota is substantially lower than that maintained in North Dakota or for traffic crossing the line between North Dakota and Minnesota notwithstanding the substantial

equality of conditions. Such substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists
338 and constitutes undue and unjust discrimination in fact. Complaints have been made to the companies of the existence of this discrimination. [Baird (N. P. Case) 1540-1; 1467; 1523; 1527; 1464; 1507; Elliott (N. P. Case) 1384; 1385; 1404; Maguire (G. N. Case) 794; 832; 841; 798, 799.]

19. St. Cloud, Minnesota, is on the Barnesville main line of the Great Northern and is 168 miles easterly from Moorhead, at which point this line leaves the state of Minnesota and enters the state of North Dakota. Fergus Falls, Minnesota, is on the same line, 56 miles easterly from Moorhead. They are each distributing centers, so declared by the Commission's Order of May 3, 1907. Whether discrimination in fact exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls as for the same distance westerly of St. Cloud. Because they are distributing rates from Fergus Falls to points within that distance westerly should be the same as from St. Cloud to points of equal distance westerly. Rates on articles covered by the Order of September 6, 1906, from St. Cloud westerly within such distance of 168 miles are substantially lower than those maintained by the Great Northern to points in North Dakota of like distance westerly of Fergus Falls. Such disparity depends only on the fact that in the case of the higher rates the state boundary line is crossed and on no other condition whatsoever; and it constitutes undue and unjust discrimination in fact not only against the shipper at Fergus Falls, but, as well, against the consumer in the North Dakota towns in question.

20. The main lines and branches of the Northern Pacific and Great Northern Companies within the states of Minnesota and North Dakota lie (wholly, excepting certain limited tracts
339 in which grain cannot be grown—such as the Bad Lands of North Dakota) within grain fields; and grain is shipped in substantial quantities from nearly all stations in these fields to Duluth, Minneapolis and Superior.

Shipments of coal originate at the Head of the Lakes, that is to say, Duluth, Minnesota, or Superior, Wisconsin, and find their destination at all localities served by the Companies or either of them in Minnesota and eastern North Dakota.

Shipments of lumber originate at Duluth, Cloquet, Little Falls and other points in Minnesota and are destined to points throughout Minnesota and North Dakota.

Shipments of live stock originate in Minnesota, North Dakota and eastern Montana and go to South St. Paul or Chicago.

Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment

originates in Montana, North Dakota or Minnesota or whether it finds its termination at one of the Minnesota terminals of the Companies or at Superior, Wisconsin.

Conditions attending transportation are substantially the same as to all these commodities moving westwardly whether the shipment originates at a Minnesota point or at Superior, Wisconsin, or whether it finds its destination in Minnesota or North Dakota.

Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal whether the shipment originates at Duluth, Minnesota, or at Superior, Wisconsin, and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for transportation of lumber whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportaion of live stock whether
340 the shipment originates in Minnesota, North Dakota or eastern Montana involves an undue and unjust prejudice and disadvantage in fact against the localities subject to the higher basis of rates and an undue and unjust preference and advantage in fact to the localities given the lower basis. Establishing the rates prescribed by Chapter 232, Gen. Laws, 1907, and maintaining these rates for transportation wholly within Minnesota simutaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana would involve on the part of the Northern Pacific and Great Northern Companies undue and unjust discrimination in fact against shippers, receivers and localities transacting the interstate business and would seriously impair the interstate business of the carriers. If the Companies shall be compelled to maintain within Minnesota the rates prescribed by Chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota and Minnesota points and Superior to a substantial parity with the basis prescribed by Chapter 232 in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business as well as in order to protect the interstate business of carriers against serious impairment.

Such reduction must be substantial. For example, the present rate on soft coal from Duluth to Wahpeton is $2 per ton. The rate prescribed by Chapter 232 from Duluth to Breckenridge is $1.31 per ton. That act provides that a minimum carload of soft coal shall be 30,000 pounds or 15 tons. So that the reduction that will be necessary to avoid discrimination against the interstate locality in the rate on soft coal will be $10.35 per minimum carload.

341 21. Duluth, Minnesota, Superior, Ashland, Green Bay, Manitowoc, Sheboygan and Milwaukee, Wisconsin, Gladstone, Michigan, Chicago, Illinois, the Peoria, Illinois, district, the

Springfield, Illinois, district, the Streator, Illinois, district, and the La Salle, Illinois, district, are all competitive points for the distribution of coal into the state of Minnesota.

For many years rates on coal from the various distributing points to localities in southern Minnesota have borne such a relation as to admit of free competition of the various distributing points and of the carriers serving them.

If the rates on coal prescribed by Chapter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by Chapter 232, from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by Chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed unless rates shall be similarly reduced from these various distributing centers to localities in these two districts.

22. Interstate rates on cattle, hogs, sheep and coarse grain would be affected by the rates prescribed by Chapter 232 in the same manner as has been found with regard to rates on wheat and coal.

23. Under the milling-in-transit privileges, so-called, owners of wheat at any point in Minnesota, North Dakota or South Dakota may pay rates equal to the sum of the rate between the point of shipment to Minneapolis and the proportional rate from Minne-
342 apolis to Chicago (for many years and at present the sum of 7.5 cents per cwt.), have it milled at Minneapolis and within a limited period of time forwarded to Chicago as flour.

In order to allow mills located at other towns in Minnesota to compete with Minneapolis a like milling-in-transit privilege has been accorded owners of wheat to ship via such other towns as via Minneapolis; and mills have been established in many such towns under a guaranty that rates into the towns in which such mills are located on wheat in and flour out to Chicago should not exceed the rates from the same points to Chicago via Minneapolis with the milling-in-transit privilege. Chapter 232, Gen. Laws 1907, substantially reduces rates on wheat within Minnesota. The result will be, if that law takes effect, that the milling-in-transit rate from points in Minnesota via Minneapolis to Chicago will be automatically reduced substantially. Unless then all interstate rates between Minnesota points and Chicago via some interior mill town and with a milling-in-transit privilege shall be reduced to a substantial parity with the reduced milling-in-transit rate to Chicago via Minneapolis, Minneapolis will have a substantial advantage in its interstate rates on wheat over the various mill towns in the interior of the state and wheat in general will as a result of this advantage go to Minneapolis.

24. Prior to the taking effect of Chapter 97, Gen. Laws 1907, the

general basis of rates for the transportation of passengers between any two points on the Northern Pacific System had been for some years three cents per mile for passengers of twelve years of age and over, and one and one-half cents per mile for passengers under twelve years of age.

Chapter 97, Gen. Laws 1907, prescribes as a maximum for transportation of passengers wholly within the state of Minnesota two cents per mile for passengers of twelve years of age or over and one cent per mile for passengers under twelve years of age.

343 After the maximum rates prescribed by Chapter 97 were installed, the sum of the locals between Moorhead and other Minnesota points and Moorhead and points westerly thereof was less than the then existing interstate rates between Minnesota points and points westerly thereof.

The result of this disparity between the through interstate rate over Moorhead and the sum of the locals over Moorhead was this: In the first month after the taking effect of Chapter 97 the revenue for passenger business on the Northern Pacific between Moorhead and other Minnesota points increased 647 per cent over that for the corresponding month of the preceding year, while, eliminating Moorhead business, the revenue for passenger business within the state decreased 2 per cent. In June, 1907, the second month after the taking effect of Chapter 97 there were sold by the Northern Pacific Company 4037 tickets between St. Paul or Minneapolis on the one hand and Moorhead or East Grand Forks on the other as compared with only 172 such tickets in the corresponding month of the year before; and in June, 1907, there were sold only 173 tickets between St. Paul or Minneapolis on the one hand and Grand Forks and Fargo on the other as compared with 984 such tickets in the corresponding month of the year before. In May and June, 1906, only one cash fare was collected on a train between Moorhead and St. Paul or Minneapolis; in those months in 1907 there were 1168 full cash fares and 82 cash half-fares so collected.

These facts compel the conclusion that the necessary, immediate, direct effect of the operation of Chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead.

25. Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the Company, one of which should cover the mileage

344 in Minnesota, discrimination in fact against the interstate passenger through Moorhead on the Northern Pacific still existed and was practiced. It existed against a passenger who, applying for a through ticket did not know that the sum of the locals on Moorhead was less than the through rate, against the pas-enger with a trunk which he could not check through unless on a through ticket, against a passenger who was compelled to use a sleeping-car.

As soon as it reasonably could do so, the Northern Pacific remedied this discrimination by reducing all its interstate fares for passenger transportation through Moorhead to an amount no greater than the sum of the locals over Moorhead. Meantime and before tariffs

established the new reduced interstate rates over Moorhead had been filed, the state of Wisconsin had enacted a two cents per mile passenger fare law, and the state of North Dakota a two and one-half cents per mile law. The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile for the mileage in North Dakota. And the rates newly established by the Northern Pacific Company jointly with other companies for passenger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota.

These reductions in rates were compelled by the necessary immediate and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the companies might transact interstate passenger business freely and without impairment of volume.

345 26. Prior to the taking effect of the respective orders complained of and of the two cents maximum passenger fare law, the tariffs of the Great Northern and Northern Pacific Companies for the transportation of passengers or merchandise in Wisconsin, Minnesota, North Dakota and South Dakota were fair as between the different states, and the local tariffs in each state were fair as compared with the interstate tariffs between such states or any two thereof; and the tariffs now maintained by the Companies and each of them for the transportation of commodities covered by Chapter 232 are fair as between these states, and the local tariffs in each state are fair as compared with the interstate tariffs between such states or any two thereof.

The installation of the rates prescribed by the respective Orders destroyed that fairness as to merchandise rates, the installation of the two cents passenger rate destroyed it as to passenger rates, and the installation of the rates prescribed by Chapter 232 would destroy it as to rates on commodities covered by it.

27. It is wholly impossible for carriers situated as are the Great Northern, Northern Pacific and Minneapolis & St. Louis companies to maintain materially lower rates or a materially lower basis of rates or a different classification of subjects of transportation, or a different relation between rates for different classes of merchandise, for traffic wholly within Minnesota than for that between Minnesota and any of its neighboring states without unjust and undue discrimination in fact against the localities in the neighboring states, and without serious impairment of the volume of the interstate business of the carriers. Such lower basis of rates within Minnesota than between Minnesota and its neighboring states would result in the promotion of the growth and prosperity of localities in Minnesota at the expense of localities in neighboring states and the enhancement of

the value of property in Minnesota and the serious impair-
346 ment of the value of the property of all business men as well as of that of the carriers themselves in the neighboring states.

28. Duluth and Superior, Grand Forks and East Grand Forks, Fargo and Moorhead, and Wahpeton and Breckenridge are so situated that each pair must be considered for the purpose of rate-making as one locality. Both as a practical matter of the operation of a railroad and in order that undue and unjust discrimination as between the members of any pair may be avoided, each city of each pair must have rates equal to those accorded to the other city. If different rates, a different classification or a different basis of rates be lawfully prescribed by one regulating power in or out of one city of any pair to those prescribed by another regulating power in or out of the other city of the pair, the carrier serving them both must, in order to avoid undue and unjust discrimination in fact as between them as well as to preserve their own power to transact business with each of them, adopt for each city the lower rates or basis of rates, or classification prescribed for either city. (As bearing generally upon the foregoing findings, numbered 1 to 28, relating to the question of interference, see testimony of Staples, (N. P. Case) pp. 2646, 2649, 2650, 2704-2790, 2891, 2916).

29. If it shall be necessary for the companies involved, in order that discrimination may be avoided, or in order that the companies may preserve the volume of their respective businesses in interstate transportation free from impairment in volume, to install for their interstate business a basis of rates no higher than these respectively prescribed in the Act and Order complained of, and to extend the rates for their interstate long-haul business upon the principal provided in said Act and Order, the result will be a substantial diminution in the revenues of the companies from their interstate business. For example, the diminution in the revenue of the Northern Pacific Company for the year ending June 30,
347 1906, the last fiscal year prior to the taking effect of the Order of September 6, 1906, from its interstate business in transportation of commodities covered by Chapter 232 alone, if the basis prescribed by Chapter 232 had been applied to its rates for such interstate business, would have been $4,193,283.04; and the loss in such interstate revenue for such year for transportation of merchandise covered by the Order of September 6, 1906, if the basis prescribed by the Order had been applied to its rates for such interstate business, would have been $4,119,761.96. The loss in its interstate business from passenger transportation, if the two cents maximum rate had been applied during such year, would have been $1,444,955.35, or a total loss, on account of the Acts and Orders complained of, of $9,758,000.35.

If, in order to prevent discrimination as between different states, it shall be necessary for the companies involved to apply for local business within the respective states, the same basis of rates as those prescribed for business local to Minnesota by the Acts and Orders respectively complained of, the loss in revenue to the companies involved will be substantial. For example, in the year 1906 the loss

in revenue of the Northern Pacific Company, if the basis prescribed by Chapter 232 had been applied to its local business in transportation of commodities covered thereby in other states, would have been $198,540.51; and its loss in revenue, if the basis of rates prescribed in the Order of September 6, 1906, had been applied to its local business in other states for transportation of merchandise covered thereby, would have been $952,644.83, or a total loss on freight of $1,151,185.34; and if the two cents maximum passenger rate had been applied to its local business in other states, the loss in revenue would have been $990,908.82, or a total loss, under the Acts and Orders complained of, of $2,142,094.16.

The foregoing findings of facts with respect to the effects of the prescribed rates upon interstate traffic, established as they are
348 by convincing and undisputed testimony and supported by the records and papers of the respective companies, are made without regard to the justness or otherwise in fact of the interstate rates so affected by such local rates, and as this can be determined only by Congress or its administrative agent the Interstate Commerce Commission, subject of course to the power of the Court in a proper case to prevent confiscation or extortion, this Court cannot, in this suit, determine the reasonableness or otherwise of such interstate rates. Before it can take cognizance thereof the question must have been presented to and passed upon by the proper Federal tribunal created for that purpose. Until then, as they are legal, they must be accepted as reasonable and the State can take no action which will compel a modification thereof as a condition of doing interstate business.

Interference with interstate commerce arises from the fact that to prevent discrimination the rates must be modified so as to correspond substantially with the State-made rates and from the further fact that interstate commerce cannot in general be maintained at all unless they are so modified. It was directly held in Louisville & Nashville Railway Co. v. Eubank, 184 U. S. 27, that the carrier cannot be compelled to adjust its interstate rates with reference to State-made rates, and since they must harmonize to prevent unjust discrimination and to enable the carrier to retain its interstate business, the State in its regulation of rates must do so with reference to their effect upon interstate commerce.

The facts as found establish conclusively that the State in the rates prescribed by it has not kept within the limitations imposed upon it and has exceeded its constitutional powers in that such rates constitute a direct interference with and impose a burden upon interstate commerce and effect unjust discrimination as between interstate localities.

If when this case was in the Supreme Court, and on the
349 record then before it the Court could say with reference to the claim of interference then made that "The question is not, at any rate, frivolous," it would seem that on the facts here found to exist a conclusion that the prescribed rates operated as a direct interference with and a burden upon interstate commerce must be in-

evitable. It follows that the relief sought in these several suits must be granted.

The question as to whether the orders of the state commission and the acts of the legislature complained of constitute such an interference with interstate commerce and operative as a burden thereon by reason of the matters of fact hereinbefore found to exist is, however, not altogether free from doubt, and it is proper, therefore, regardless of the views of the Master, that he should proceed to make findings upon all the issues in the case.

VI.

Valuations of Property Devoted to Public Service.

In determining the remaining issues in the case, the initial step is to ascertain and determine the value of the property devoted to the public service and upon what basis such valuations should be made. In the leading case of Smyth v. Ames, 169 U. S. 522, adhered to and constantly cited in every rate case since coming before the courts, the following language is used:

"It cannot be assumed that any railroad corporation, accepting franchises, rights and privileges at the hands of the public, ever supposed that it acquired, or that it was intended to grant to it the power to construct and maintain a public highway simply for its benefit, without regard to the rights of the public. But it is equally true that the corporation performing such public services and
350 the people financially interested in its business and affairs have rights that may not be invaded by legislative enactment in disregard of the fundamental guarantees for the protection of property. The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it.

* * * * * * *

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Here we have a clear declaration that a corporation performing a public service cannot be required to use its property for the benefit of the public without receiving just compensation therefor, not some compensation but just and reasonable compensation, based upon the value of such property. There are, of course, exceptions to this rule. Under no circumstances can the rates be excessive, extortionate or unreasonable. They must be just to the public as well as to the carrier. If the road was unwisely conceived, unfavorably
351 located and not constructed in response to public demand, a return upon such value is not to be expected if it compels unjust rates. But no conditions exist in these cases to take them out of the general rule.

It also appears from this and subsequent cases that it is the present value of the property which is to be taken as a basis of rates. As again stated by the same Court in Wilcox v. Consolidated Gas Company, 212 U. S. 19: "There must be a fair return upon the reasonable value of the property at the time it is being used for the public * * * and we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property which legally enters into the consideration of the question of rates has increased in value since it was acquired, the company is entitled to the benefit of such increase. This is, at any rate, the general rule."

This clearly shows that the company is to share as well as the public in the general growth and prosperity of the country. It would seem, therefore, that the value of these properties can best be determined by reference to the cost of reproduction at the present time. As stated in the Wilcox case, cited in the decision rendered by the lower court upon a review of prior decisions of the Supreme Court of the United States,

"It is impossible to observe this continued use of the present tense in these decisions of the highest court without feeling that the actual or reproductive values at the time of inquiry is the first and most important figure to be ascertained."

The roads under consideration were constructed and completed many years ago and what may have gone into them, if it could be determined with reasonable certainty, would not take into consideration the changed condition of the country since their original construction, its growth and prosperity—in which the companies are entitled to share—and by reason of changed conditions
352 and lapse of time it has little weight in arriving at present values. As stated by Judge Hook in the recent case of Missouri, Kansas & Texas Railway Company v. Love, et al., in this circuit,

"There is another matter to be regarded, not specifically mentioned in the above excerpt from the opinion of Mr. Justice Harlan. An established railroad system may be worth more than its original cost and more than the mere cost of its physical reproduction. It has passed the initial period of little or no return to its owners which, of greater or less duration, almost always follows construction and is not infrequently marked by default and bankruptcy. The inevitable

errors in its building which finite minds and hands cannot avoid have been measurably corrected, time and effort have produced a commercial adjustment between it and the country it was intended to serve, relations have been established with patrons, and sources of traffic have been opened up and made tributary. In other words, the railroad, unlike one newly constructed, is fully equipped and is doing business as a going concern. It has attained a position after many experiences common to railroad enterprises which entail loss and cost not paid from current earnings and which correspondingly make for value."

It is here proper to say that the foregoing decision was written in a very carefully considered case, in which many of the issues were practically the same as in the instant cases, and wherever applicable it must control the Master in determining the questions here raised. And this is so not only because it is a decision of one of the judges of this court but because it is in harmony with other like decisions of this court and of the Supreme Court of the United States and contains, as the Master believes, a comprehensive and accurate statement of the law and discloses a lucid conception and clear expression of the facts which are very generally found to exist in all these railroad rate cases. Practically everything contained in that decision is applicable to or has a more or less direct bearing
353 upon the cases here under consideration and completely covers and denies many of the contentions of counsel for the State—urged at great length and with marked ability before the Master.

In the light of this decision and others therein referred to and approved, our first duty is to ascertain the fair value of the property devoted to the public service.

To this end a large volume of testimony was produced before the Master on behalf of complainants and the State, respectively, as to the reproduction cost of such property—and by such property is included only that which is used for the benefit of the public and which, with the revenue directly or indirectly derived from such use, is alone to be considered in determining the question of a reasonable rate. Other revenues and other properties the company may have but as to them the public has no concern.

Prior to suit brought the State by its Railroad & Warehouse Commission called upon the defendant railroad companies and all other like companies in the state for a statement of all the properties of the companies, respectively, devoted to public use, with the valuation and the cost of reproduction new within the state, such statement to be made and returned upon itemized blank forms or schedules furnished for the purpose consisting of thirty-nine different items, into which divisions were to be made, and which when filled out would constitute an estimate of cost of reproduction of all the physical properties of each of said companies as made by it.

This led to a personal examination of the physical properties of the railroad companies which was made by the State's engineer, employed for the purpose, and also by the agents and officers of the respective companies, and such schedules as so filled out and returned,

with sundry modifications thereof by them made, have been produced before the Master, and testimony in support thereof was given by witnesses making such examinations. Three competent
354 and reliable real estate agents in each of the cities of St. Paul, Minneapolis and Duluth were selected by the railroad companies to make an appraisal of the terminal properties, exclusive of improvements, of each of the roads in their respective cities, and the valuations placed upon the properties by said several sets of appraisers in their respective cities, supported by their testimony produced before the Master, have been used by complainants as a basis for terminal values in said respective cities. These examinations and appraisements of railroad physical properties were made in the years 1906 and 1907 and the valuations so found were brought up to June 30, 1908, by adding thereto the valuations of properties acquired after such examinations and appraisements were made at the actual cost thereof.

The evidence discloses a wide difference of opinion with reference to the value of these properties, and in fairness to both parties to the controversy the Master has made findings as to each item in the schedule referred to and produced before him, and, where as to any item there is a very substantial difference between the parties, or between them and the value so found by the Master, he has briefly stated his reasons for the findings made.

The Master's findings of value are as follows:

VII.

Real Estate Valuations as of June 30, 1908.

Item 1. Lands for right-of-way, yards and terminals:

Northern Pacific case, amount allowed	$21,024,562.90

This amount is made up as follows:

Terminal properties, St. Paul appraisement of Read, Watson & Taylor, as modified by railroad company	7,645,100.24
Add 5 per cent for the cost of acquisition and consequential damages	382,255.01
355 Property acquired after appraisement	328,725.69
Minneapolis, appraisement of Elwood, Barney and Ridgeway, as modified by railway company	4,027,616.17
Add 5 per cent for acquisition and consequential damages	201,380.80
Property acquired after appraisement	227,737.26
Duluth, appraisement of Stryker, Mendenhall and Little	3,602,443.43
Add 25 per cent for railway value, cost of acquisition and consequential damages	900,610.85
Total value of terminals	17,315,869.45
Lands outside of terminals	3,708,693.45
Grand Total	21,024,562.90

	Great Northern case; amount allowed	25,172,630.80
	St. Paul, appraisement of Read, Watson and Taylor	6,433,348.00
	Add 5 per cent for cost of acquisition and consequential damages	321,667.40
	Minneapolis, appraisement of Elwood, Barney and Ridgeway	11,619,765.00
	Add 5 per cent for cost of acquisition and consequential damages	580,968.15
	Duluth, appraisement of Stryker, Mendenhall and Little	713,280.00
	Add 25 per cent for railroad value, cost of acquisition and consequential damages	178,320.00
	Total value of terminals	19,847,366.55
	Lands outside of terminals	5,325,284.25
	Grand total	25,172,650.80
	Minneapolis & St. Louis case; amount allowed.	5,999,397.90
356	Minneapolis, appraisement of Elwood, Barney and Ridgeway	4,556,298.00
	Add 5 per cent for cost of acquisition and consequential damages	227,814.90
	Land outside of terminals	1,215,285.00
	Grand total	5,999,397.90

In arriving at the foregoing valuation of terminals, upon a careful examination of the testimony the Master has taken the valuation of the terminal properties made by the three appraisers appointed by the railroad companies in each of the three cities named and who gave their testimony in these cases as found in the record and made such valuation a basis for his conclusions. He is of opinion that the reductions made from such valuations by the Northern Pacific Company as to its properties in St. Paul and Minneapolis were clearly justified by conditions differentiating the properties upon which such reductions were made from other properties valued by the appraisers and which were not fully appreciated by them. They were much farther removed from the business centers of the cities and partook more of the nature of suburban property.

While it is true that the highest value of these terminal properties is their adaptability for railroad purposes and they must be acquired in a continuous tract suitable and convenient to meet the demands of the business and traveling public, thus largely enhancing their value, yet it is not true that these values for such purpose are limited only by the needs of the company and upon the theory that it must have the property or abandon the enterprise. It is not the needs of the company but the peculiar fitness and adaptability of the property for railroad purposes which gives it an enhanced value—often very much greater than for any other purpose. The fact that there is other property equally available in the immediate vicinity that a line of road of substantially the same efficiency and answer-
357 ing a like purpose can be secured by changing its course or the location of terminals may be properly taken into consid-

eration as bearing upon railroad value. While it is true that in these cases these particular terminals and rights of way are the subject of valuation, and no other, still such valuation must not be based upon the assumption that the companies must have them at any price and must pay anything the owner sees fit to exact, but should be determined and controlled, as far as may be, by a survey of the whole situation, and comparisons, where they can be made, with other properties which are in like manner available.

The right of eminent domain is given to the company for the purpose of preventing the property owner from taking advantage of the necessities of the company as to any particular tract. While it is intended to secure to him its full and fair value for any purpose for which it is best adapted—and to this end an appeal is given to the courts from unrighteous awards—we are not to lose sight of the fact that railroads must be constructed along continuous lines and that the topography of the lands through which the lines are projected has much to do with their availability for railroad purposes and that such availability necessarily and properly enhances their value, for which the owner is entitled to compensation, and so it comes about that properties so available and favorably situated for the purpose have a much greater value than other adjoining or adjacent properties not so conditioned.

The Master is of the opinion that the appraisers of the St. Paul and Minneapolis terminals were fully impressed with their value for railroad purposes and their appraisement, as verified by them before the Master and as modified in the Northern Pacific case, is a generous valuation and should be accepted as full railroad value of the terminal properties and has been by him so accepted with an addition of five per cent to cover cost of acquisition and conse-
358 quential damages, and which seems ample for the purpose in the large cities. The peculiar location of the properties did not seem to require a large increase on this account.

In Duluth, the appraisers were much more moderate in fixing values and seemed to have adjusted the same with reference to the adaptability of the property for general business enterprises and not to have taken into consideration their special and increased value for railroad purposes. It is determined that their appraisement, increased by twenty-five per cent thereof, all things considered, will fairly cover reproduction cost, and their valuation is fixed at such sum accordingly.

The Master has not overlooked the testimony offered by the State bearing upon these valuations and has given to it such consideration as in his opinion it was entitled to. It is proper to say, however, that it has not impressed him as entitled to much weight. The avowed purpose of the State was to get away from opinion values as much as possible owing to the fact that witnesses are necessarily and unconsciously influenced by the interests of those at whose instance they are called, however fair and unbiased they may intend to be—considerations which the Master in fixing values has kept in mind. To this end the State has not offered the opinion of any witness as to the value of any of these terminal properties,—ignoring, as it

would seem, the fact that real estate values are necessarily and largely a matter of opinion when applied to any particular tract or parcel of land. As a substitute therefor the State's engineer and chief witness on this subject has adopted a method, in each of the three terminal cities, substantially as follows, taking the city of St. Paul as an example:

He ascertained from the records the selling price of genuine sales of land for a period of years, and amounting to a large number, in every part of the city. The selling price of the lands without improvements, so far as this could be ascertained, was compared with the assessed value thereof, and it was found that on the aver-
359 age the assessed value was about sixty per cent of the selling price of such lands, and from this comparison the market value of the lands for general purposes was ascertained. Then the lands at varying width on each side of the side of the center line of the railroad land to be valued was divided into sections so that the lands in each section, according to his judgment, should be as nearly as practicable of like value, and the assessed value of the lands in such section was obtained and such assessed value was determined to be sixty per cent of the market value of the lands assessed. The market value, or, as he styles it, the "true value" so found was then applied to the railroad lands within the section, and to find their railway value, seventy-five per cent thereof was added to such market value, it having been determined by him that railroad companies have to pay on the average seventy-five per cent more for properties required by them than the market value as so found.

Such, in brief, is the State's method of producing terminal property values, and generally known as the assessment and sales method.

It is conceded that when applied to any particular tract of land it cannot be relied upon, but it is claimed that when applied to extensive contiguous tracts, as are rights of way, the doctrine of averages will bring about reasonably correct results. To make a market value assessment, the assessor could not rely on such methods with respect to any particular tract, but would be compelled to make a personal inspection and determine whether assessment must be reduced or increased and where it stood with reference to such average. We can understand that, for the purpose of equalizing values as between counties where many contiguous sections of land are under consideration and for the purpose of making each county pay its relative proportion of state taxes, such method would be of great value by reason of the broad base for purposes of comparison,
360 but the relative market value for the counties having been ascertained, then a personal inspection by the assessor would be necessary of each tract assessed to determine whether the assessment must be reduced or increased, that is, whether as previously assessed it was above or below the general average.

The evidence shows that the railroad lands in St. Paul constitute about eight per cent of all the assessed lands in the city, and, distributed among all the railroads owning terminal properties, each has but a very small per cent thereof. These considerations, added to the notoriously gross inequalities of assessments, compel the Mas-

ter to give little weight to testimony of this character. On the other hand, he does not conceive he is bound to accept opinion testimony as absolute but only as a large determining element in connection with all the facts and circumstances disclosed in the evidence, and this has been done in reaching his conclusions. He has given careful consideration to actual purchases recently made in acquiring property for railroad purposes and cited to show that they substantiate values fixed by the witnesses on either side, for of course they are of great value for such purpose.

No deduction has been made for street crossings or parts of streets used for right of way held under rights acquired from the respective city authorities without acquisition of the fee. For railroad purposes these rights are substantially as valuable as if held under absolute title. They are permanent in character and in case of reproduction would cost practically as much as private property.

With reference to right of way values outside of terminals, opinion testimony has been submitted by both parties, and, save in the Minneapolis & St. Louis case, there are wide differences between them. They have both used multipliers, generally of three, to cover cost of reproduction over market value. That is, the market value of adjacent lands has been ascertained and applied to the
361 right of way lands and such value multiplied by three to ascertain what it would cost a railroad company to acquire the property. Whether this multiple has been used in the same manner, having in mind the same basis is somewhat doubtful. In determining such basis the Master believes the witnesses for complainants have been somewhat expansive, influenced measurably by the increased value for railroad purposes over its ordinary market value for farm purposes, and have used too large a multiplier. At the same time, the testimony of the chief witness for the State is much impaired by the fact that he evidently based his estimates upon valuations as fixed by the complainants' witnesses, of which they are found to be, in some fifty-two villages on the Northern Pacific road, an exact per cent and ranging from twenty to eighty per cent lower than such valuations. (See Exhibit 75—Cooper.) It is not doubted that he made as careful and painstaking effort, within the limited time he was able to devote to the purpose, as was practicable to ascertain and determine the market value of the properties appraised, but the weight of such testimony would have been manifestly greater if valuations had been independently fixed by him without regard to those previously made by the railroad company. At the same time the fact that his values of such property in the Minneapolis & St. Louis case, as also of much other property on that line of railway, were so nearly the same as the value of the chief witness for complainants in that case that they were able to compromise their differences has a tendency to corroborate his values on the other roads.

Upon careful consideration of the evidence and all the circumstances thereby disclosed bearing on the question, seventy-five per cent of the valuations as fixed by complainants' witnesses has been

determined upon as the fair reproduction value of the property in the Northern Pacific and Great Northern cases.

362 Item 2. Grading, clearing and grubbing:

Northern Pacific Case: Amount allowed.....$12,331,541.52

After allowance by State for adaptation and solidification placed by it in an item by itself, and by complainants included in this Item 2, the difference between the parties is substantially $850,339.68, and is fully accounted for by inadequate unit prices and insufficient quantities adopted by the State's witness as the basis of his estimate.

Item 2. Great Northern case:

Amount allowed $21,685,802.00

Complainant claims for this item $22,155,453, which includes $3,235,022.91 allowed by the State as a separate item for adaptation and solidification of road-bed and $448,227 for additions to the road after June 30, 1907—to which time only the State's estimates were made. This left a difference between the parties of $1,798,792.85. I have credited the complainant with this difference except items for abandoned right of way, amounting to $135,876, and the further sum of $333,775 for estimate of work not of record. There seems to be no substantial reason for not allowing for the extra work shown by the records and also the usual ten per cent increase on work shown only by profile—a usual allowance for profile estimates and so recognized and accepted by the State's engineer in the Northern Pacific Case. As to unit prices, the weight of evidence in this and the other cases shows that the State's witness in the unit prices used by him failed to allow an adequate amount for extra cost of other than contract work and in this respect unit prices fixed by complainants' witnesses should be accepted.

Item 2, Minneapolis & St. Louis case:

Amount allowed $2,551,690.00

Item 3, protection work, rip-rap and retaining walls:

Northern Pacific case: Amount allowed.....$374,091.53

The State's testimony would very materially increase this amount.

363 Item 3, Great Northern case:

Amount allowed $850,069.00

It is conceded that as to this item the only difference between the parties is as to the unit prices. In the Northern Pacific case the price of $2 per yard for rip-rap claimed by complainant's witness seems to have been conceded by the State, and no reason appears for the State not conceding it here and insisting, as it does, that only $1.25 per yard should be allowed.

Item 3, Minneapolis & St. Louis case:

Amount allowed $52,240.00

Item 4, Tunnels:

Northern Pacific case: Amount allowed..... $253,250.00

The chief difference between the parties concerning this item is as to the allowance of anything for the Seventh street viaduct, so-called, in the city of St. Paul, constructed by the city after the road was built. The Northern Pacific Company did not construct this tunnel, nor does it appear from the evidence that even under the latest decisions of the courts it could have been compelled so to do. It is, so far as appears, a permanent structure not likely to require repair or replacement; at least the evidence does not disclose to the contrary. It forms an adequate passageway for the movement of trains, as much so as if created by natural conditions, and is substantially different from overhead bridges and like structures which the company could be compelled to reconstruct and maintain and which will require frequent repairs, renewals and replacements. If such were required, it may be assumed, in the absence of testimony to the contrary, that the city would be obliged to do the work and that the company's rights were properly safeguarded when it consented to the construction of a causeway over its right of way.

Item 4, Great Northern and Minneapolis & St. Louis cases. There are no tunnels on these lines in Minnesota.

364 Item 5, Cross-ties and switch-ties:

Northern Pacific Case: Amount allowed..... $3,657,576.70

Accepted as claimed by complainant and includes transportation.

Item 5, Great Northern case:

Amount allowed $5,460,809.00

The complainants have taken as average price of ties 70.5 cents. The price for ties as claimed in the Northern Pacific case, with a larger per cent of high-grade ties, is 67.2 cents, which is deemed fair and is accepted for this case. The State's valuation of 55.5 cents per tie is based upon prices in 1905 and does not allow for inspection and handling. The rapidly increasing price of ties since that time clearly justifies the finding here made.

Item 5, Minneapolis & St. Louis case:

Amount allowed $1,149,829.00

The ties on this road were high-grade, oak and cedar exclusively, and the price claimed for same, respectively, 75 cents for oak and 65 cents for cedar, is accepted, being the same as allowed in the Northern Pacific case for such quality of ties. The State found a shortage

of 32,000 ties in the number claimed and a deduction is made therefor at 70 cents per tie, it not appearing of what kind the deficiency consisted.

Item 6, Ballast:

Northern Pacific case: Amount allowed.....$1,960,969.00

This amount is found by taking the same unit price as in the Great Northern case of 62 cents per yard.

Item 6, Great Northern case:

Amount allowed $3,861,360.00

The main difference between the parties is unit prices. A careful analysis of the testimony justifies the prices and quantities claimed by complainants of 62 cents per yard. The State clearly overlooked items of expense in a very considerable amount in the unit
365 prices of 45 cents per yard adopted by it. Other reliable testimony fixes such prices much higher than those above allowed, while complainant's chief witness, from actual measurements on the ground and records of the company, was best qualified to testify as to quantities.

Item 6, Minneapolis & St. Louis case:

Amount allowed $357,855.00

Item 7, Rails:

Northern Pacific case: Amount allowed.....$5,645,307.73

This includes handling, inspection and transportation to central points of each section under construction.

Item 7, Great Northern case:

Amount allowed $9,053,977.00

The only material difference between the parties after allowance for rails acquired after June 30, 1907, not included in the State's estimate, is in unit prices and here allowed at $30.25 per ton at St. Paul and Duluth. The State's engineer and the engineer in the Northern Pacific case fix this price at $29.75, the former as of June 30, 1907, the latter as of June 30, 1906. Having in mind the difference in time and prices paid by the company in 1908 and the matter of handling and inspection allowed indirectly if at all by the State, $30.25 seems to be a fair average price. Transportation charges to the front is claimed for and allowed in a separate item.

Item 7, Minneapolis & St. Louis case:

Amount allowed $1,540,392.00

Item 8, Track fastenings:

Northern Pacific case: Amount allowed.....$727,228.37

This is the amount claimed by complainant. If acquisition after State's estimate was made is excluded, the amount allowed is substantially less than the State was willing to concede.

Item 8, Great Northern case:

Amount allowed $2,087,615.00

The difference in the estimates of the respective parties is $171,146.28, of which $28,800 is due to acquisition after State's
366 estimate was made. The residue is due to difference in unit prices and those of complainant are accepted as they are based on actual prices paid during the current year and there is nothing in the testimony to suggest that they are improper.

Item 8, Minneapolis & St. Louis case:

Amount allowed $258,561.00

Item 9, Switches, frogs and railroad crossings:

Northern Pacific case: Amount allowed.....$303,717.80

The difference between estimates of the respective parties is not large and for the most part arises from additions made after State's estimate was made. If Items 8 and 9 are taken together there is substantial agreement between the parties.

Item 9, Great Northern case:

Amount allowed $300,519.00

The State concedes a substantially greater amount if acquisitions after State's estimate was made are added to it.

Item 9, Minneapolis & St. Louis case:

Amount allowed $66,807.00

Item 10, Track laying and surfacing:

Northern Pacific case: Amount allowed.....$1,600,591.56

In taking the amount claimed by complainant as the amount allowed the fact is not overlooked that 439.476 miles of road is allowed for at the rate of $1,050 per mile instead of $760 per mile as in the other cases. The latter figure covers only such surfacing as is necessary for ballast and construction trains. In taking the higher figure it is not contemplated that the surfacing will be immediately followed by ballasting, but that it will leave the road in condition suitable for commercial business and that it will be followed by ballasting at some later time. A similar division of work is not found

in the other cases, where it seems to be assumed that surfacing will be immediately followed by ballasting to make a completed road ready for operation.

367 Item 10, Great Northern case:

Amount allowed..... $2,207,753.00

It is difficult to reconcile the wide differences between the parties in these cases with respect to this item. As a matter of fact it is of such character that there ought not to be great disparity in unit values. In this (the Great Northern case) the State's estimate is based on a cost of $500 per mile, while complainant bases on a cost of $835 per mile, with the items entering into such cost substantially the same. For so-called contract work (that is, labor of handling material and laying track,) the State allows only $275 per mile. It appears from the records of the company (Ex. 7—Hogeland) that as long ago as 1898 in the construction of 150 miles of road in Minnesota the company actually paid $359 per mile for such work—an undertaking sufficiently extensive to be a fair criterion of value. If such was the sum necessarily paid, as the books of the company show—and they are not challenged—it would have cost much more in 1908, $400 per mile being a low estimate. Again, the State allows, in the Northern Pacific case, and presumptively the same in this, only $28.75 for surfacing while in the work referred to in 1898 the company actually paid $142 per mile for such work. This small amount allowed by the State for surfacing was upon the theory that where track laying was to be followed as soon as practicable by ballasting little surfacing would be required. The testimony shows that even in such case it is customary and more economical to do a very considerable amount of surfacing to hold the track and ties in place for ballasting and the construction work to follow. The amount so allowed by the State seems greatly inadequate. For train service the State allows only $61.30 per mile, whereas in the work of 1898 referred to the actual cost was $114 per mile. Taking the difference in time, increased cost and other matters into consideration, it would seem that the complainant's claim in the Northern Pacific case of $760 per mile is fairly
368 conservative, and is adopted as a proper basis for this item in each of the three cases. Such allowance contemplates that there will be very considerable surfacing from the sides so as to make the road sufficiently permanent and stable for the passage of ballast and construction trains in the further prosecution of the work but not in condition for commercial traffic.

Item 10, Minneapolis & St. Louis case:

Amount allowed..... $384,751.00

It appears that the company in 1906 and 1907 did work of this character in South Dakota and amounting to 250 miles at a cost of $890 per mile, of which $130 per mile was charged as material-yard

expense. Such expense does not appear in the estimates in the other cases, and if in this it is deducted from the total claimed, we have $760 per mile, just the amount allowed in those cases. Whatever may have been the conditions in South Dakota appertaining to this work there done, it does not satisfactorily appear that for the road in this state such expense would be necessary.

Item 11, Bridges, trestles and culverts:

Northern Pacific case: Amount allowed..... $3,586,053.00

Allowing for construction after State's estimate was made, there remains a difference between the parties of $896,072.21. The State bases its figures, apparently, in a large measure upon the reports made of such work by a number of other important railroad lines. Its engineer made use of these reports in making up the estimate in connection with his own very considerable knowledge and experience in such matters—and such estimate is not to be ignored. It is to be observed, however, that reports of other companies not supported by evidence as to basic facts should be received with caution. Exhibit 86—Darling—discloses the difference between the parties with respect to the items of work making up the total aggregate and actual prices paid for such items in recent years, from which it appears that the unit prices so paid are considerably higher
369 than those used by the State. Upon careful review of the whole testimony it is determined to allow to complainant on account of this item a sum equal to two-thirds of this difference; that is, State's allowance, $2,578,014, plus new work, $410,658, plus two-thirds of $896,072 equals $3,686,053.

Item 11, Great Northern case:

Amount allowed..... $6,664,729.00

Allowing for construction after State's estimate was made and omissions from it of bridges and, seemingly, also, of foundation work, the difference between the parties is $448,589.44, and is to be accounted for by difference in unit prices. The State's prices are compared with the prices returned by a number of other important railroad lines in the state and seem to have been quite largely based upon or fixed with reference to them, as appears in the Northern Pacific case. For reasons stated in that case there is allowed to complainants two-thirds of the difference on account of this item; that is, state's allowance $5,141,781 plus new work and omitted bridges and foundations $1,223,889 plus two-thirds of $448,589 equals $6,664,729.

Item 11, Minneapolis & St. Louis case:

Amount allowed..... $1,025,827.00

The difference between the parties on this item is $354,292. Except as to three overhead bridges in Minneapolis, the chief witnesses seemed to harmonize as to quantities. It was claimed

by the State that the three bridges mentioned were built by the city and for this reason no allowance was made therefor. But as they apparently form a part of street highways, as the law now is, their repair and renewal as acquired must be borne by the company and the city could not have been compelled to construct them in the first instance if the law had been properly interpreted and observed. Their reproduction cost should have been allowed at the sum of $54,580. This must be offset by an error in quantities of
370 masonry found by the State's witness, amounting, at the unit prices reported by the company, to $23,000, which leaves $31,580 to be added to the State's estimate, leaving a difference of $322,712, due apparently to unit prices. For reasons stated in the other case the benefit of two-thirds thereof is given to complainants. State's estimate $799,106 plus $31,580 plus two-thirds of $322,712 equals $1,025,827.

Items 12 to 28, inclusive, and 31 to 34, inclusive:

Northern Pacific case and Great Northern case:

As to the foregoing items in each of these two cases after allowing complainants for acquisition after State's estimates were made, it appears that the total value thereof as conceded by the State exceeds the amount claimed by the complainants who in their brief assume a substantial agreement. It is determined that in the Northern Pacific case the valuation of said items in the aggregate amounts to the sum of $20,272,398.23 and in the Great Northern case to the sum of $28,838,580. The valuations placed on each of the items making up such aggregate valuations, respectively, by the witnesses for complainants, are found to be fair and reasonable and are made part of the summary schedule to follow. As the aggregate is less than conceded by the state it cannot complain.

Minneapolis & St. Louis case:

In this case there was little difference between the parties as to the items from 12 to 26 and the differences in these and some other items were compromised and figures taken accordingly and appear in the summary to follow. These figures so taken represent the Master's judgment of the fair value of the items respectively.

Item 30, Engineering, superintendence and legal expenses:

Northern Pacific case: Amount allowed..... $2,633,946.00

This is 4½ per cent on Item- 1 to 28, same as in Great Northern case.

371 Great Northern case: Amount allowed..... $3,867,040.00

This is obtained by taking 4½ per cent on Items 1 to 28, inclusive, and is sufficient to cover general expenses, for which a separate claim is made.

Minneapolis & St. Louis case: Amount allowed. $690,364.00

For valuation of Items 31 to 34 in this case see summary to follow.

Item 36, Freight on construction:

Northern Pacific case: In this case this item has not been kept separately but is included as a part of the cost of all items requiring such service.

Great Northern case: Amount allowed..... $1,700,043.00

The evidence clearly favors the view that this item should be allowed at regular tariff rates; that it is more economical to make use of other roads as far as possible in handling material to the front and that now full tariff rates must be paid for such service rather than the conventional five mills per ton per mile which seems to have formerly obtained. As the law now is, no favors can be extended to railroad companies or reductions made in the interest of reciprocity.

Minneapolis & St. Louis case:

This and Item 37 are to be taken in connection with Item 39 and is covered by it.

Item 37, Contingencies:

Northern Pacific case: Amount allowed..... $3,710,479.00

The amount here allowed is five per cent on Items 1 to 34 and corresponds to the State's method, and in view of present knowledge—making definite many things which would in a road projected into new territory be uncertain—the amount seems ample.

Item 37, Great Northern case:

Amount allowed..... $4,367,826.00

372 This amount is obtained by allowing ten per cent on all items into which labor enters and eliminates items a knowledge of which has been acquired by the actual construction of road. The State's method would have somewhat increased this amount.

Item 38, Stores and supplies in Minnesota:

Northern Pacific case: Amount allowed..... $2,658,976.00

Item 38, Great Northern case:

Amount allowed..... $3,240,178.00

Item 38, Minneapolis & St. Louis case:

Amount allowed..... $238,589.00

Item 39, Interest during construction:

Northern Pacific case: Amount allowed..... $7,386,215.00

This is interest at four per cent for 2½ years on Items 1 to 36.

Item 39, Great Northern case:

Amount allowed..... $17,880,150.00

This allowance is based upon four per cent on Items 1 to 36 for a period of four years, during which time it is assumed the aggregate of such items would average the amount paid out without a return. It is fair to allow interest on payments made until as the rseult of such payments revenue is derived, and this is recognized by all the authorities, as well as by the State's witnesses. This is an interest allowance, however, and is not analogous to returns based on the hazards of the business, as are rates. Returns from savings banks' accounts and the better class of bonds are less than four per cent, and under all the circumstances interest at this rate seems fairly compensatory and is what is claimed and allowed in the Northern Pacific Case.

Minneapolis & St. Louis case, Items 36, 37 and 39:

Amount allowed..... $1,834,880.00

In view of testimony, ten per cent of Items from 1 to 34, inclusive.

Item 40, interest in terminal properties:

Northern Pacific case: Amount allowed..... $2,204,342.00

373 The situation of this company with respect to the St. Paul Union Depot and Minnesota Transfer companies is identical with that of the Great Northern company, to be hereafter explained. With respect to the Duluth Union Depot and Transfer Company, the Northern Pacific Company owns all the stock and makes use of the property of the company as its own by the operation of its line of road; it is simply an operating tool and transacts no business on its own account or otherwise than as an agent of the Northern Pacific Company, and its properties should be valued as belonging to that company.

In this case it was conceded at the close of the argument before the Master that the Big Forks and International Falls Railway and the Minnesota and International Railway had not been made to appear as part of the Northern Pacific system, and they have not been included in the valuations which have been made.

Item 40, Great Northern case:

Amount allowed..... $1,186,191.00

This is the valuation of the one-tenth interest owned by the company in the Minnesota Transfer Railway and of the one-ninth interest in the St. Paul Union Depot properties. Such ownership is not direct but is evidenced by stock in subsidiary corporations in whose name the properties are carried and operated for the sole and exclusive benefit of the respective railroad companies which own

the stock and make use of the properties as an operating tool and as part of the properties of their respective lines of railroad. These companies are substantially joint owners of the property and as a matter of convenience and to more readily adjust accounts as between themselves growing out of the several use by each of them as so made of it, an agency for the purposes is created by an intermediary corporation under their direct control. To such agent each pays for such use of the property and charges the amount paid in
374 its expense account, and dividends, if any, go into the revenue account as operating expenses and revenues.

These subsidiary corporations are mere agencies operated for and wholly dependent upon the railroad companies who own the stock and in no sense are they independent enterprises engaged in business on their account. In the evidence and all the proceedings before the Master it has been by all parties assumed that such was their character, and this being so the properties thereof should be considered as property of the companies to the extent of their respective interests as represented by stock.

These terminal properties, located as they are and used for receiving and discharging passengers and for receiving, handling, transferring and forwarding freight, are of exceptional value and importance and the facilities so provided are found to be fully worth the amount claimed therefor by complainants and such amount has been taken in each of the cases.

Item 40, Minneapolis & St. Louis case:

Amount allowed..... $1,186,191.00

The interest of this company in the Minnesota Transfer and St. Paul Union Depot property is apparently the same as in the other cases and is allowed for the reasons before stated.

A claim was made in the Great Northern case for lines under construction, but the evidence fails to show why they should constitute an element of rate-making value. Until they become completed roads and are made part of the system so as to produce revenue, they should not be regarded. Upon completion it will be noted that interest during construction is allowed as an element of reproduction cost, which—when it shall become entitled to recognition—will fully cover the claim so made.

375 *Summary of Valuations of Physical Properties.*

Itemized in Each of the Three Suits.

Northern Pacific Case.

Items.		
1.	Lands for right of way, yards and terminals	$21,024,562
2.	Grading, clearing and grubbing	1,331,541
3.	Protection work, rip-rap, retaining walls	374,091
4.	Tunnels	253,250
5.	Cross-ties and switch-ties	3,657,576
6.	Ballast	1,960,969
7.	Rails	5,645,307
8.	Track fastenings	727,228
9.	Switches, frogs and railroad crossings	303,717
10.	Track laying and surfacing	1,600,591
11.	Bridges, trestles and culverts	3,586,063
12.	Track and bridge tools	28,073
13.	Fences, cattleguards and signs	471,609
14.	Stockyards and appurtenances	37,098
15.	Water stations	436,489
16.	Coal stations	120,039
17.	Stations, buildings and fixtures	920,423
18.	Miscellaneous buildings	1,054,874
19.	Steam and electric power plants, gas plants	196,338
20.	General repair shops	1,162,934
21.	Shop machinery and tools	529,322
22.	Engine houses, turntables and cinder pits	1,026,346
23.	Track scales	38,520
24.	Docks and wharves	768,306
25. 26.	Interlocking plants and other signal apparatus	114,430
376		
27. 28.	Telegraph and telephone lines	285,145
28½.	General office furniture	73,654
29.	Solidification of roadbed. (Absorbed in above.)	
	Total 1 to 28	$58,728,685
30.	Engineering, superintendence, legal expenses, 4½ per cent 1 to 28	$2,785,036
31.	Locomotives	3,454,040
32.	Passenger equipment	1,349,829
33.	Freight car equipment	7,519,722
34.	Miscellaneous equipment	372,477
35.	Marine equipment (none).	
	Total items 1 to 34	$74,209,789

36. Freight on construction material—absorbed.	
37. Contingencies, 5 per cent 1 to 34	3,710,479
38. Stores and supplies in Minnesota	2,658,976
39. Interest during construction, 4 per cent 2½ years Items 1 to 36	7,420,957
40. Interest in terminal properties, St. Paul depot, Duluth depot, Minnesota Transfer	2,204,344
	$90,204,545

Great Northern Case.

Items.	
1. Lands for right of way, yards and terminals	$25,172,650
2. Grading, clearing and grubbing	21,685,802
3. Protection work, rip-rap and retaining walls	850,069
4. Tunnels (none).	
5. Cross-ties and switch-ties	5,460,809
6. Ballast	3,861,360
7. Rails	9,053,977

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8. Track fastenings	2,087,615
9. Switches, frogs and railroad crossings	300,519
10. Track laying and surfacing	2,207,753
11. Bridges, trestles and culverts	6,664,729
12. Track and bridge tools	54,450
13. Fences, cattleguards and signs	448,864
14. Stockyards and appurtenances	81,600
15. Water stations	569,900
16. Coal stations	202,200
17. Station buildings and fixtures	1,561,200
18. Miscellaneous buildings	1,446,445
19. Steam and electric power plants and gas plants	413,752
20. General repair shops	1,070,765
21. Shop machinery and tools	953,531
22. Engine houses, turntables and cinder pits	727,100
23. Track scales	39,700
24. Docks and wharves	37,500
25. Interlocking plants	193,268
26. Signal apparatus	116,046
27. Telegraph lines and appurtenances	634,744
28. Telephone lines and appurtenances	37,893
29. Solidification of roadbed (Absorbed in above).	
Total 1 to 28	$85,934,241
30. Engineering, superintendence, legal expenses, 4½ per cent 1 to 28	$3,867,040
31. Locomotives	5,469,270
32. Passenger equipment	1,886,178

33. Freight car equipment	12,411,265
34. Miscellaneous equipment	482,909
35. Marine equipment (none).	
Total 1 to 34	$110,050,903

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36. Freight on construction material	1,700,043
	$111,750,946
37. Contingencies	4,367,826
38. Stores and supplies in Minnesota	3,240,178
39. Interest during construction (4 per cent four years 1 to 36)	17,880,150
40. Interest in terminal properties	1,186,191
	$138,425,291

Minneapolis & St. Louis Case.

Items.	
1. Lands for right of way, yards and terminals	$5,999,397
2. Grading, clearing and grubbing	2,551,960
3. Protection work, rip-rap, retaining walls	52,240
4. Tunnels (none).	
5. Cross-ties and switch-ties	1,149,829
6. Ballast	357,855
7. Rails	1,540,392
8. Track fastenings	258,561
9. Switches, frogs and railroad crossings	66,807
10. Tracklaying and surfacing	384,751
11. Bridges, trestles and culverts	1,025,827
12. Track and bridge tools	27,791
13. Fences, cattleguards and signs	141,606
14. Stockyards and appurtenances	55,704
15. Water stations	80,637
16. Coal stations	25,682
17. Station buildings and fixtures	239,434
18. Miscellaneous buildings	32,901
19. Steam, electric power and gas plants	58,050
20. General repair shops	180,588
21. Shop machinery and tools	101,875

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22. Engine houses, turntables and cinder pits	148,303
23. Track scales	8,421
24. Docks and wharves (none).	
25. Interlocking plants	15,674
26. Signal apparatus	2,594
27. Telegraph lines and appurtenances	27,109
28. Telephone lines and appurtenances (none).	
29. Solidification of roadbed (Absorbed in above).	
Total items 1 to 28	$14,533,988

30. Engineering, superintendence and legal expenses 4¾ per cent 1 to 28	$690,364
31. Locomotives	698,163
32. Passenger equipment	341,006
33. Freight car equipment	1,998,345
34. Miscellaneous equipment	86,938
35. Marine equipment (none).	
Total Items 1 to 34	$18,348 804
36. (Included in Item 39.)	
37. (Included in Item 39.)	
38. Stores and supplies	238,589
39. Freight on construction material, contingencies, interest during con-truction	1,834,880
40. Interest in terminal properties	1,186,191
	$21,608,464

VIII.

Depreciation.

Having thus found the cost of reproduction new of these several railroads properties, the question remains what if anything shall be deducted for depreciation.

It is established that the roadbed is constantly increasing
380 in value. It becomes solidified, embankments and slopes of excavations become settled and stable and so the better resist effects of rains and frost. It becomes adjusted to surface drainage and the adjustment is made permanent by concrete structures and rip-rap, and in other ways a roadbed long in use is far more valuable than one newly constructed On the other hand, everything on and above the roadbed depreciates from wear and weather-stress. The life of a tie is from eight to ten years only. Structures become antiquated, inadequate and more or less dilapidated. Ballast requires renewal, tools and machinery wear out, cars, locomotives and equipment, as time goes on, are worn out or discarded for newer types. A large part of the depreciation, however, is taken care of by constant repairs, renewals, additions and replacements, a sufficient sum being annually set aside and devoted to this purpose, so that this, with application of roadbed and adaptation to the needs of the country and of the public served, together with working capital hereinafter mentioned fully offsets all depreciation and renders the physical properties of the road not less valuable than their cost of reproduction new. This conclusion is fully supported by the evidence and also justifies the language hereinbefore cited from the Missouri, Kansas & Texas Railway case, decided by Mr. Justice Hook.

There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies.

No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making.

In view of all the foregoing considerations it follows without question that there should be no deductions on account of depreciation.

381 IX.

Stocks and Bonds as Affecting Value.

There was produced before the Master reliable evidence as to the average market value of the stocks and bonds issued by the Northern Pacific Company for a period of five years ending April 30, 1908, and then outstanding, such average value amounting in the aggregate to the sum of $509,824,723. (Exhibit 17—Gray.) The par value April 30, 1908, of the stock was $215,539,634.99 and of the bonds, $190,256,577.66. Total $405,796,392.65. (Exhibit 14—Gray.)

The total track mileage claimed by Complainant's Exhibit 2—Darling—is 8,146.45 miles. From this must be deducted 150.65 miles for the Minnesota and International line and Big Forks & International Falls line, improperly included, and also lines in Manitoba under lease and not operated as part of the system, amounting approximately to 300 miles, the exact amount not being definitely shown by the evidence. This leaves 7,695.80 miles. The track mileage in Minnesota is 1,625.20 or substantially 21 per cent of the whole. Taking this per cent of the stock and bond average market valuation for said five year period gives $107,063,191, which considerably exceeds the cost of reproduction new, but it must be noted that the value of stock is based on all the assets of the company and is not limited to value of property to public service, and its balance-sheet for the whole system of April 30, 1908 (Exhibit CC—Gray), shows a clear surplus $52,900,073, while some of its assets, notably the Northwestern Improvement Company stock, is apparently of far greater value than as listed. Assets and property not devoted to public service have not been valued, and as they are a large element in stock valuation it follows that value of bonds and stocks is wholly unreliable and cannot be used in these cases as an element in determining the value of operating property or as a basis rate-making.

382 In the Great Northern case, the average market value of stocks and bonds for five years ending June 30, 1908, was shown to be $452,363,804. (Exhibit 67—Drew), par value $263,078,242.42 of average amount outstanding. The mileage in Minnesota is about 32.59 per cent of the total mileage, so that of this stock and bond average market valuation for said five year period the amount to be assigned to Minnesota on a track-mileage basis would be $147,425,363. Of this amount a very considerable sum must be predicated on property not devoted to the public service, thus reducing the proportion assignable to Minnesota mileage.

At time suit was brought in the Great Northern Case the par value of stock was $149,577,500 and of bonds was $83,119,939. June 30th, 1908, par value of stock was $209,962,750 and of bonds was $97,955,939.39; total $307,918,689.39. (Ex. 54—Parker.)

In the Minneapolis & St. Louis case, the par value of stocks and bonds in 1908 was shown to be $30,011,800. The market value of stocks and bonds in 1908 was shown to be $22,006,197, (Exhibit- 6 and 7—Scott), which, apportioned on basis of mileage owned by the company, of which about sixty per cent is in Minnesota, gives a valuation assignable to the State of $13,203,718, or about one-fifth less than the value of property as conceded by the State within Minnesota and thirty per cent less than its value as found by the Master on the reproduction basis.

Stock valuations are subject to great fluctuation from causes wholly foreign to the intrinsic values of properties to be taken as a basis of rate-making and have little commercial stability. It is impossible to determine with any degree of certainty the particular elements which from time to time cause such fluctuations and determine the market value of such stocks and to separate the same from the value of properties devoted to public use and decide what proportions thereof shall be assigned to each. Prof. Henry C. Adams, statistician of the Interstate Commerce Commission, has this
383 to say in respect to stock valuations:

"This is no place to enter upon a discussion of the nature and classification of different kinds of value, but a word of caution may be allowed in order to guard against an unwarranted use of the figures here submitted. The commercial valuation of railroad property, in so far as it depends on income arising from the sale of transportation, is the result, among other things, of an established schedule of freight and passenger rates, from which it follows that such a valuation cannot be used for determining the reasonableness or unreasonableness of the rates in question. The solution of the rate problem demands a separate valuation of the physical property."

Valuation of properties for purpose of taxation would include all the properties of the corporation whether devoted to the public service or not, and in such case the market value of stocks and bonds issued by it would be an important element of value.

X.

Original Cost of Construction.

In the Northern Pacific, the Great Northern and Minneapolis & St. Louis cases a large amount of evidence was produced before the Master for the purpose of showing actual cost of construction of the entire railroad systems from the organization of the original companies and by them and by their successors, the present companies, down to April 30, 1908. This could be shown only by the books and records of the two companies, the Northern Pacific and Great Northern, and in the early history of the original companies these are somewhat obscure and uncertain and, by reason of lapse of time, cannot be verified by other proof.

The investment cost, in the Northern Pacific case, amounts to the sum of $369,252,755. In this aggregate is included an item
384 of interest during construction amounting to $4,534,882, which is a proper credit, for reasons before stated.

There is also included items aggregating $24,709,164 for discounts made and commissions paid in disposing of its bonds. This, of course, was a necessary and proper expense of the company, and if required to render an accounting it would be entitled to take credit therefor, just as it would be allowed in an accounting demanded with respect to any other business in which any corporation or private person might be engaged. It cannot be said, however, that it is money which has actually gone into the road, but rather an expense which the company incurs for the purpose of procuring such money. If rate-making is to be based upon actual cost, it would seem that such cost must be measured by the money necessarily expended in producing the construction without regard to whether those undertaking the enterprise have the same or must borrow for the purpose—a matter in which the public has no concern. If allowed interest dufing construction on the money invested, more should not be asked; otherwise, the rate would be directly affected by the good credit or otherwise of those undertaking the work. It seems that formerly and down to 1907 the Interstate Commerce Commission permitted a credit for this item of discount but now disallow it.

The total investment of $369,252,755 above mentioned also includes an item of $32,573,036, the basis of which is an item found in an old ledger and noted in Exhibit 28—Gray as "Claims of old stockholders recognized in reorganization representing net cost in issue of new stock less proceeds of lands, $32,573,036.16," and for which stock was issued and credit taken therefor. It seems probable that this stock was issued without consideration, and the fact that it was never included in the annual reports to the State, as shown in Exhibit V, tends to discredit it, and as there is no supporting
385 evidence it should be disallowed. With these deductions, the cost of construction account is reduced to $312,243,555.

The Minnesota track mileage, as before stated, is substantially 21 per cent of the track mileage of the whole system and if the above cost were proportioned accordingly the amount assignable to the State is 21 per cent of $312,243,555, or a total sum of $65,571,462. This is considerably less than the valuation of the physical properties as found and makes no allowance for appreciation of property incident to the growth or prosperity of the country in which the company is entitled to share.

In the Great Northern case, the balance-sheet of the company of date June 30, 1908, shows the book valuation of property for the entire system devoted to the public service to amount to the sum of $319,681,815.

Upon production of their books and examination made thereof by the State's accountants this amount seems to be reduced to the sum of $295,401,213 by reason of disallowance of the following items: First, when in 1879 this company's immediate predecessor, the St. Paul, Minneapolis & Manitoba Railway Company, took over the properties from the latter's predecessor, the St. Paul & Pacific

Railroad Company, it seems to have arbitrarily increased the book valuation by $12,126,342. Not unlikely this includes cost of reorganization, taking over from the receiver a bankrupt road and putting it on its feet again under able and efficient management, but for such purpose the amount seems excessive. It may also include enhanced value attaching to property as a going concern under such management. There is no evidence in explanation.

Second, discount on sale of bonds, disallowed for reasons before stated, $4,794,867.

Third, difference between cost to the company of the stock of the Willmar & Sioux Falls Railway Company and its par value of $1,500,000, it being included at the latter sum in its investment account, $831,275.

386 Fourth, actual cost of construction of the Willmar & Sioux Falls railroad was less than as included in investment account by $55,950.

Fifth, in the matter of the Eastern Railroad of Minnesota the book valuation or cost exceeds the actual cost of acquisition of Superior terminals and stock of Lake Superior, Terminal & Transit Company and of acquisition of the Duluth, Mississippi & Northern Railroad in the sum of $4,961,426.

Sixth, the book valuation or cost of stock of Duluth, Watertown & Pacific railroad exceeds the actual cost to the company in the sum of $724,161.

Seventh, the excess of book value over actual cost of Wadena & Park Rapids line, the Alton & Halstead line and the Red Lake Falls line amounts to $286,581.

Eighth, book valuation of Minneapolis Union Railway line when taken over was arbitrarily increased in the sum of $500,000.

Total book valuation, as before stated, $319,681,815; total of deductions as above, $24,280,602; balance, $295,401,213.

In explanation of some of the foregoing deductions it is to be kept in mind that as to acquired roads the question is not what it cost the company to take them over but what money has actually gone into their construction.

The total track mileage of the road's entire system is 8,528.98 miles, and of the part in Minnesota 2,779.30 miles, so that practically 32.59 per cent is in this state, and taking this per cent of $295,401,213 we have $96,271,255 as the book value of what has actually been expended in construction and equipment of the road in Minnesota. Of course division on a mileage basis is for the most part arbitrary and unreliable.

In the Minneapolis & St. Louis case, the book cost of property and investments amounted to $30,572,619. Deducting for discounts disallowed for reasons before stated leaves a remainder of $28,574,225. Dividing this on a mileage basis 59.94 per cent, assigns

387 to Minnesota $17,127,390, and apportioned on a gross revenue basis over the entire system, 77.41 per cent assigns to Minnesota $22,119,307.

For reasons before stated, rates are not to be predicated on original investment. Prof. B. H. Meyer, of the Wisconsin University, an eminent railroad statistician who has given the matter very careful

consideration, as appears from the so-called Wisconsin Buel rate case, in which he wrote the decision of the commission, says:

"Bearing in mind, however, that this is a commercial valuation, it is impossible to advance a single valid argument in favor of the acceptance of cost accounts as the equivalents of values. It would be nearer the truth to say that costs of railway properties have nothing to do with their values than to assert that the values of railway properties are identical with costs."

And again,

"The method which satisfies in the highest degree the requirements of the valuation of railway systems as a whole as well as the distribution of the total values of such systems among states is the inventory method. This is a composite method, each constituent element in which is designed to solve one phase of the general problem of valuation and value distribution. The basal principle of the method is an engineer's estimate of the cost of reproduction of all physical properties new and in present condition, the latter being usually expressed in terms of per cent of the former."

Again he has said,

"The cost-of-reproduction method carries with it a greater degree of demonstratable certainty and conviction than all the others which have been proposed."

And again,

"Value of a railroad property, ascertained by the stock-and-bond method alone, cannot be used with fairness to carriers in cases involving important reductions in their rates."

388 The Minnesota Railroad & Warehouse Commission in its report to the legislature which resulted in authority to incur the expense necessary to obtain the inventory appraisement made by it sets out very forcibly the value of such appraisement as an element of rate-making. It says:

"It is uniformly held that the cost of reproduction is one of the very important elements in determining what is a reasonable rate and certainly is the strongest kind of evidence of the fair value of the property. The Commission has always recognized the carrier's right to earn a reasonable return on a fair valuation of its property, and has always had this in mind in every rate adjustment it has made. The valuation will be of great value in sustaining the Commission and the legislature in pending legislation should the contention be made that the rates in controversy will not produce a fair return on the property used, and it can be used in any further readjustment of rates that the Commission may deem it advisable or necessary to make."

The Master is thus confirmed in his opinion that the cost of reproduction new is the fairest and most equitable basis upon which to predicate rates, both for the carrier and the public, and he has accordingly adopted it in these cases.

Good will and corporate franchises are not proper elements of such valuation. Patronage and good will of the public are its contributions to the success of the enterprise, for which it is not to be assessed. Corporate franchises are the free gift of the government conferred upon any organization willing to embark in such undertak-

ing, but knowledge derived from experience, adaptation to the needs of the public and readiness to serve, together with physical appreciation of roadbed and a reasonable amount of working capital always on hand for immediate use, are matters of value which will fully offset depreciation arising from use and weather-stress.

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XI.

Roads Constructed and Maintained Pursuant to Public Demand.

It is true of these lines of railway that they are efficiently, economically and honestly managed; that they have been located and constructed pursuant to a public demand and that the public rather than dispense with the service of any of them can well afford and will gladly pay such rates as will produce a full and fair return on cost of their reproduction—such return as others engaged in business of similar character and of like hazards and uncertainties are accustomed to receive, and rates sufficiently high for such purpose would not be burdensome, unjust or unreasonable.

Abandonment of either of these roads would be a great public calamity, and if we could conceive of their being suddenly obliterated, their immediate reconstruction would follow in response to the public necessity, which shows that they must be worth what it would cost to reproduce them and that a return based on such cost will not be oppressive.

It is to be observed, however, that there is a marked difference in some respects between the location and surrounding conditions of the Northern Pacific and Great Northern roads, on the one hand, and the Minneapolis & St. Louis road, on the other. The former lines extend from the Head of the Lakes at Duluth and Superior and from the great commercial cities of St. Paul and Minneapolis to important seaboard cities on the Pacific coast and throughout their length, both within and beyond the state of Minnesota, connect with other important lines of railroad and exchange traffic therewith in large volume, and also have many and important branch lines reaching out into productive agricultural lands which operate as feeders and largely increase the business of the main lines. Their terminals at the Head of the Great Lakes and at the Pacific coast bring
390 about the exchange of a large tonnage with vessels navigating those waters, both domestic and foreign, and add largely to the volume of business.

The Minneapolis & St. Louis road, on the other hand, however, is so located that it cannot participate in these advantages and must largely depend on local and inland traffic for its business. It runs south from the inland cities of St. Paul and Minneapolis to Des Moines, with a branch to Storm Lake, Iowa, and a branch to the South Dakota grain fields. Along its entire line it comes in sharp competition with strong intersecting railroad lines, and, while as before stated, it subserves a useful public purpose and is operated in response to public demand, it can be maintained only by the exercise of the highest economy and watchfulness in its operation and

to succeed must be given greater latitude than is necessary with respect to the more favorably located and prosperous lines of railway. Necessarily, to get business its rates must conform to those existing on other roads wherever competition is an element, but when this does not exist it is entitled to rates not so controlled by competition, and within reasonable limits must, to exist, be given a free hand in the conduct of its business, as will later be made to appear when the consideration of rates is reached.

XII.

Economy of Management.

It has been urged before the Master with reference to the lines of railway under consideration that the evidence discloses want of economical management in that limited portions of the business were unremunerative and not infrequently resulted in loss.

If the convenience and demands of the public were disregarded, greater economy could doubtless be exercised. Full cars and long trains at fewer intervals would be a great saving of cost, and
391 to this end produce could be stored in elevators awaiting shipment under the most economical conditions. Needless to say that this would result in great public inconvenience and dissatisfaction, and recourse to such methods is unthinkable. The carrier must properly yield to public demand and recoup for loss on other portions of its business.

It is also urged that as to some of the roads surplus lands and equipment are disclosed much beyond present needs. But it is good business sense to anticipate and prepare for the requirements of the near future. Readiness to serve is of the highest importance to those requiring service and an efficient management will, if practicable, take advantage of the markets and buy what will soon be needed when it can be obtained at a reasonable price and not wait until it must be had regardless of cost. Present patrons are not to be burdened for the benefit of those to be acquired in the distant future, but they can well afford to pay a somewhat higher rate that they themselves in the near future may enjoy a cheaper and better service. It is proper for the carrier not only to provide itself with ample facilities for the efficient conduct of its present business, but also to anticipate demands soon to be made as the country becomes more prosperous, and it is entitled to revenue sufficient for such purpose.

Having these considerations in mind, it does not appear that the service rendered or the property acquired and held for present and prospective needs are unreasonable or excessive or that any property has been improperly included as a basis of cost of reproduction for rate-making purposes.

XIII.

Valuations of Entire System.

Complainants have offered considerable testimony for the purpose of establishing value of the physical properties of the whole system,

both in the Northern Pacific and Great Northern cases, and they ask a finding of such valuation.

392 The State has confined its testimony as to value of such physical properties only as are in Minnesota. The Master does not consider a finding in the matter at all necessary in determining the controversies submitted to him, but as such finding is desired by complainants he concludes to make it.

In the Northern Pacific case there was testimony to the effect that the cost of reproduction of the physical properties of the entire system would amount to the sum of $526,779,016. This includes $28,913,981 for the Spokane, Portland & Seattle road, one-half of which is owned by the Northern Pacific Company and one-half by the Great Northern Company, the amount so taken being one-half of such cost. This road was, at the time evidence was submitted, under construction, did no commercial business, earned no revenue, and until completion could form no part of the operating system. When completed its cost of reproduction will be enhanced by interest during construction and until then it forms no part of rate-making valuation. It is not included in the track mileage of the system hereinbefore found to amount to 7,695.80 miles.

There is also included in complainants' estimate the further sum of $4,116,874 for the Minnesota and International and the Big Forks and International roads which, for reasons before given, must be deducted.

There has also been so included the further sum of $7,000,000 for lines in Manitoba which are under leases and form no part of the company's operating system.

Eliminating these items leaves a balance of $486,738,161.

Assuming, as we may, that there should be at least the same per cent reduction for the whole system as it has been found necessary to make in Minnesota (which after deducting as here for the Minnesota & International and the Big Forks & International Falls lines was substantially seven per cent), the valuation amounts to $452,666,489, and upon the testimony produced the cost of reproduction is found to amount to this sum.

393 In the Great Northern case, there was testimony to the effect that cost of reproduction for the entire system would amount to $549,253,317. Deducting for its interest in the Spokane, Portland & Seattle line $21,827,521 and for lines under construction $8,219,581 leaves a balance of $519,206,215.

Assuming, as in the Northern Pacific case, that there should be the same per cent of reduction for the whole system as it has been necessary to make in Minnesota, and which is substantially 12 per cent, the valuation amounts to the sum of $457,121,469, and upon the testimony before the Master the cost of reproduction of the whole system is found to amount to this sum.

XIV.

Division of Property Valuation Between Freight and Passenger Business, State and Interstate.

A common use in general is made of the property devoted to the public service for both the freight and passenger business, both state and interstate, respectively, and in making a statement with reference to each class so as to determine revenue with respect to cost, there must be a division of property valuation on some fair basis and an assignment to each of its proper proportion, so that each may carry its proper share of property expense.

It is inequitable that the traveling public, largely on pleasure bent, should cast any part of the expense it incurs on the freight business which has to do almost altogether with traffic in which the public as a whole is directly interested.

On the other hand, it has never been claimed that the latter should be relieved at the expense of the former, and the cases all recognize the propriety of separation upon an equal basis as near as may be.

394 Furthermore, to determine what net revenue is derived from intrastate business and the per cent of return upon property used in that class of business, it becomes necessary to make a subdivision of property values and determine what part thereof should be assigned to state and to interstate business, respectively. The revenues from each class of business within and properly assignable to the state are known and the amount thereof and the separation as between states accepted by both parties and are practically free from estimated approximations.

Of course, any division of property value between the two classes of business, freight and passenger, must be an approximation, but one made on the relation of gross revenue derived from each kind of business has been uniformly accepted as the fairest, all things considered, in all rate cases heretofore judicially determined. While a division of property valuation on the relation of cost has been suggested by defendants, it was practically conceded to be as open to criticism as that made on the basis of revenue. Relative cost as hereafter found is at best a rough and unsatisfactory approximation, necessarily inaccurate, and should not be accepted as a divisional basis if it can be avoided. The revenue basis is not ideal, but it has an element of certainty possessed by no other and is not more objectionable in other respects.

There is no controversy between the parties in the Northern Pacific and the Minneapolis & St. Louis cases as to the total revenue and the part thereof assignable to state and interstate business respectively. In the Great Northern case there is some difference in this respect between the parties, bt if the claim of defendants was allowed, it would not in any manner alter the judgment herein recommended to be entered.

A division of total value between freight business and passenger business, state and interstate, on the gross earnings basis in each of the three cases may be stated as follows:

395 Northern Pacific Case.

Division of Total Value Between Freight Business and Passenger Business on Gross Earnings Basis.

The total value of the property of the Northern Pacific Company, used in the fiscal year ending June 30, 1908, in the conduct of its transportation business in Minnesota, was $90,204,545.

Such total value may justly and fairly be apportioned between freight business and passenger business on the basis of gross earnings,—that is, assign to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both.

Total gross earnings from freight business and passenger business, including miscellaneous earnings of each, was in said year $13,336,046.87.

Gross earnings freight business, including miscellaneous (consisting of switching, demurrage, storage, etc.) $9,823,508.35 equals 73.661 per cent of total.

Gross earnings passenger business, including miscellaneous (consisting of mail, express, excess baggage, etc.) $3,512,538.52 equals 26.339 per cent of total.

73.661 per cent of total value ($90,204,545) assigns $66,445,570 to the freight business, and 26.339 per cent of total value assigns $23,758,975 to the passenger business.

Division of Value Apportioned to Freight Business, Between Intrastate Business and Interstate Business on Gross Earnings Basis.

The total freight earnings, including miscellaneous, in Minnesota for the fiscal year ending June 30, 1908, amounted to $9,823,508.35, of which $1,606,771.26, or 16.356 per cent thereof, was intrastate, and $8,216,737.09, or 83.644 per cent, was interstate.

396 16.356 per cent of total value apportioned to freight business ($66,445,570) assigns $10,867,837 to the intrastate freight business, and 83.644 per cent of such total value apportioned to the freight business assigns $55,577,733 to the interstate freight business.

Division of Value Apportioned to Passenger Business Between Intrastate Business and Interstate Business.

The total gross passenger earnings, including miscellaneous, in Minnesota for the fiscal year ending June 30, 1908, amounted to $3,512,538.52, of which $1,206,333.09, or 34.344 per cent thereof, was intrastate and $2,306,205.43, or 65.656 per cent thereof, was interstate.

34.344 per cent of the total value apportioned to the passenger business ($23,758,975) assigns $8,159,782 to the intrastate passenger business, and 65.656 per cent of such total amount apportioned to the passenger business assigns $15,599,193 to the interstate passenger business.

Summary of Apportionment of Total Value to the Different Classes of Business in Minnesota.

Total value of property used in transportation business in Minnesota, for the fiscal year ending June 30, 1908		$90,204,545
Total value apportioned to freight business, 73.661 per cent, or	$66,445,570	
Total value apportioned to passenger business, 26.339 per cent, or	23,758,975	
Total		$90,204,545

(Equals 100 per cent.)

397 Assign to intrastate freight business 16.356 per cent of total value apportioned to freight business		$10,867,837
Assign to interstate freight business 83.644 per cent of total value apportioned to freight business		55,577,733
Assign to intrastate passenger business in Minnesota 34.344 per cent of the total value assigned to passenger business		8,159,782
Assign to interstate passenger business in Minnesota 65.656 per cent of total value assigned to passenger business in Minnesota		15,599,193
Total		$90,204,545

Great Northern Case.

Division of Total Value Between Freight Business and Passenger Business on Gross Earnings Basis.

The total value of the property of the Great Northern Company used in the fiscal year ending June 30, 1908, in the conduct of its transportation business in Minnesota, was $138,425,291.

Such total value may be justly and fairly apportioned between freight and passenger business on the basis of gross earnings—that is, assign to each such percentage of total value as the amount of gross earnings of each bears to the total gross earnings of both.

Total gross earnings from freight business and passenger business, including miscellaneous earnings of each, was in said year	$20,275,907.75
Gross earnings, freight business, including miscellaneous (consisting of switching, demurrage, storage, etc.)	15,936,998.85
(Equals 78.6 per cent.)	
398 Gross earnings passenger business, including miscellaneous (consisting of mail, express, excess baggage, etc.)	4,338,908.90
Equals 21.4 per cent.	

(See Ex. 30, Parker, 49 Martin and 53 Ward.)

78.6 per cent of total value ($138,425,291) assigns $108,802,279 to the freight business, and 21.4 per cent of total value assigns $29,623,012 to the passenger business.

Division of Value Apportioned to Freight Business Between Intrastate Business and Interstate Business on Gross Earnings Basis.

The total freight earnings including miscellaneous in Minnesota for the year ending June 30, 1908, amounted to $15,936,998.85, of which $2,408,421.43, or 15.112 per cent thereof, was intrastate, and $13,528,577.42, or 84.888 per cent thereof, was interstate.

15.112 per cent of total value apportioned to freight business ($108,802,279) assigns $16,442,200 to the intrastate freight business, and 84.888 per cent of such total value apportioned to the freight business assigns $92,360,079 to the interstate freight business.

Division of Value Apportioned to Passenger Business Between Intrastate Business and Interstate Business.

The total gross passenger earnings, including miscellaneous in Minnesota for the year ending June 30, 1908, amounted to $4,338,908.90, of which $2,086,276.68, or 48.083 per cent thereof, was intrastate, and $2,252,632.22, or 51.917 per cent thereof, was interstate.

48.083 per cent of the total value apportioned to the passenger business ($29.623,012) assigns $14,243,633 to the intrastate passenger business, and 51.917 per cent of such total amount ap-
399 portioned to the passenger business assigns $15,379,379 to the interstate passenger business.

Summary of Apportionment of Total Value to the Different Classes of Business.

Total value of property used in transportation business in Minnesota for the fiscal year ending June 30, 1908	$138,425,291
Total value apportioned to freight business 78.6 per cent or	108,802,279
Total value apportioned to passenger business, 21.4 per cent or	29,623,012
Total, 100 per cent	$138,425,291
Assign to intrastate freight business 15.112 per cent of total value apportioned to freight business	$16,442,200
Assign to interstate freight business 84.888 per cent of total value apportioned to freight business	92,360,079
Assign to intrastate passenger business in Minnesota 48,083 per cent of the total value assigned to passenger business	14,243,633
Assign to interstate passenger business in Minnesota 51.917 per cent of total value assigned to passenger business in Minnesota	15,379,379
	$138,425,291

Minneapolis & St. Louis Case.

For this case see infra XVII, p. 127, where it is considered separately.

400

XV.

Reasonable Return.

Having made the foregoing distribution of property valuations, the question is, What return are the companies respectively entitled to receive thereon without legislative interference for the protection of the public?

It has been found that a full and fair return, such as is derived from investments in like kinds of business and subject to like conditions, would not compel the public served to pay an unjust or burdensome rate. It follows, therefore, that such valuation is as much an element of rate-making and is entitled to the same consideration as are the operating expenses of the company. The theory that it is entitled to some return, the amount thereof to be adjusted by the legislature regardless of property values devoted to the public service, must be rejected. Any rate which will not produce a full and fair return is unreasonable, and is confiscatory to the extent that it comes short of producing such return, and is a taking of property from the carrier class and giving it to the persons served without compensation.

What is a just return? One of the most fair-minded and intelligent witnesses before the Master; one who from his long official experience and efficient service had necessarily given the matter very careful consideration, was of the opinion that the carrier should be assured an average annual return of seven per cent on a fair valuation of its property. The Master concurs in this view. Having in mind the nature of the business, its fluctuations from year to year due to extremes of weather and varying crop conditions, the fact that operations can never be suspended, but in time of adversity as well as of prosperity the carrier must be ready to serve or forfeit its property devoted to the public service, and that competition is ever present and increasing, it would seem that the return here
401 suggested would be the minimum when compared with returns from other kinds of business not subject to such conditions. It must be remembered also that the public demands and is able and willing to pay for a service of the highest efficiency, requiring able and skillful management. The continued prosperity of the country depends upon it, and the returns from such undertakings should be sufficiently adequate to encourage the investment of ample capital for their successful prosecution.

In Wilcox v. Consolidated Gas Co., 212 U. S. 19, the question as to the reasonableness of the rates prescribed by the state of New York for the defendant company within the city of New York was before the Court for its determination. After making some general observations as to what compensation public service corporations would, under varying conditions, be entitled to receive, the Court uses the following language:

"In an investment in a gas company, such as complainant's, the risk is reduced almost to a minimum. It is a corporation, which in fact, as the court below remarks, monopolizes the gas service of the largest city in America, and is secure against competition under the circumstances in which it is placed, because it is a proposition almost unthinkable that the city of New York would, for purposes of making competition, permit the streets of the city to be again torn up in order to allow the mains of another company to be laid all through them to supply gas which the present company can adequately supply. And, so far as it is given us to look into the future, it seems as certain as anything of such a nature can be, that the demand for gas will increase, and, at the reduced price, increase to a considerable extent. An interest in such a business is as near a safe and secure investment as can be imagined with regard to any private manufacturing business, although it is recognized at the same time that there is a possible element of risk, even in such a business. The court below regarded it as the most favorably situated gas business in America, and added that all gas business is inherently sub-
402 ject to many of the vicissitudes of manufacturing. Under the circumstances, the court held that a rate which would permit a return of six per cent would be enough to avoid the charge of confiscation, and for the reason that a return of such an amount was the return ordinarily sought and obtained on investments of that degree of safety in the city of New York.

"Taking all facts into consideration, we concur with the court below on this question, and think complainant is entitled to six per cent on the fair value of its property devoted to the public use."

If a gas company under the conditions there disclosed, with an assured revenue beyond all reasonable probability of hazard, was entitled to six per cent net return on the value of its property devoted to the public use, a finding that in these cases the companies are entitled to seven per cent net return on such valuation after allowing for all necessary repairs and replacements is certainly conservative and does no injustice to the public. Few businesses are so free from hazard as that of national banks, and the evidence discloses that the average results of their business for thirty-eight years ending with 1907 show net annual earnings to capital and surplus of 8.58 per cent, and for the period from March 1, 1897, to June 30, 1907, of 9.84 per cent.

The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found.

XVI.

Net Revenue Derived from Freight and Passenger Business, Respectivly.

It now becomes necessary to determine the net revenue derived from the passenger and freight business, respectivly, within the State of Minnesota, and to do so we must ascertain the cost in each
403 class. It has been hereinbefore determined what the gross revenue derived from each class of business and apportioned

to the state is, and there is no substantial controversy as to the gross aggregate cost incurred in conducting both classes of business taken as a whole, nor as to the apportionment thereof to the state.

Because of the fact that there is a common use of the property in conducting each class of business, it is impossible to apportion to each with any degree of accuracy its proper proportion of cost so that neither shall be unduly burdened, and as to this matter the parties are far apart, both as to results and as to methods in obtaining them, in both the Northern Pacific and Great Northern cases.

In the two cases last above mentioned, the allocations of cost made by the companies respectively have been accepted by both parties. That is to say, each company has assigned to the passenger business all those items of cost directly incurred in conducting that class of business and not common to both classes, and has assigned to the freight business all those items of cost directly incurred in conducting that class of business and not common to both classes, which assignments are accepted by both parties, and the items thereof are called allocated items and cover about sixty per cent of all expenses. The remaining items of cost not so allocated and which are common to and are incurred in conducting both freight and passenger business, are not capable of separation and assignment to each class except upon some more or less arbitrary basis, and approximations only are attainable. Such items by both companies have, in general, been divided and assigned to passenger and to freight business, respectively, upon the relation, as to most of them, which the revenue train-miles in the one class of business bears to the revenue train-miles in the other class of business, and to the items not so divided, upon the relation which the revenue engine-miles in the one
404 class bears to the revenue engine-miles in the other, and this division and assignment has been accepted by the complainants and they have offered much testimony in support thereof in these two cases.

The division so made of such common items of cost between freight and passenger for the year ending June 30, 1908, in the Northern Pacific case is found in Ex. 79—Elliott, and the method pursued is fully explained by the assistant comptroller, Johnson, in his testimony found in Vol. 6, at pages 3249, et seq., of the printed Record in that case. A like division in the Great Northern case is found in Ex. 47—Martin, with explanations by the assistant comptroller, Martin, of the method pursued, in Vol. 2, at page 955 of the printed Record in that case. The method is the same in both cases and is the one now, and which for many years last past has been, in general use upon all the leading railroads of the country when any attempt at such division is made, constituting, in mileage at least, about one-third of all the lines of railway in the United States. A division of this character was at one time required by the Interstate Commerce Commission, and the foregoing method was the one prescribed for the purpose. Such requirement was subsequently withdrawn and such division of cost between freight and passenger seems to have been quite generally abandoned, but many companies, for their own use and information, continue to make such division according to this

method, which would seem to have been the outgrowth of practical observation and experience in the exercise of an honest judgment. When it was originally adopted, there was no apparent reason, from interest or otherwise, for unduly burdening either class of business with more than its proper share of common expense. Its use is approved and supported by the evidence of a number of witnesses having an intimate knowledge and large experience in the practical operation of railway transportation in all its details.

The method of division presented by the evidence on be-
405 half of defendants is one devised by their accountant, Mr. C. W. Hillman, and may be styled the Hillman method. There is no difference between the parties in the division of train movement items, being items from 10 to 27 in the schedule of items used by them. The difference arises with respect to the rest of the items contained in such schedule, and they are for the most part divided by Mr. Hillman, item by item, in accordance with his individual judgment and opinion as to the propriety of such division. No other witness was called in support of his method of division, nor does it appear that his experience was such in the practical operation of a railway as to specially qualify him for the work. He is certainly an able accountant and statistician, but could not be classed as a practical operating man. It seems to the Master that the weight of evidence fails to sustain his method. In the Northern Pacific case, for the fiscal year ending June 30, 1907, it results in taking something over $400,000 from the passenger and adding it to the freight expense, and in the Great Northern case, for the fiscal year ending June 30, 1908, it in like manner affects the relation of passenger to freight expense in the sum of $933,694. Manifestly no one else, proceeding along the same lines that Hillman did but exercising his own individual judgment as to what, with respect to each item, was a proper division, would have reached the same results obtained by Hillman, except as a mere coincidence. It was conceded that the method could be made to produce any result desired by the person making use of it unless every step taken by its author, varying from time to time according to conditions, were strictly followed.

If the views of the Master as to what is a reasonable rate of return, and his valuations, are accepted and approved, the Hillman method, both as to division of freight and passenger, and his methods of determining the per cent of return on state business, would not, if
406 adopted, change the decree to be entered, either in form or substance. It would, however, make a wide spread between the per cent of return from each class of business, so wide as to itself suggest that the division made by him was an improper one, greatly favoring, as it does, the net revenue from passenger business. The Master determines that the method of division of common cost between the freight and passenger business made by the Northern Pacific Company and the Great Northern Company with respect to the traffic on their respective roads most nearly approximates an accurate result, and the same is adopted for the purpose of division in the Northern Pacific and Great Northern cases.

In the Minneapolis & St. Louis case a division of cost between

freight and passenger business was made by the company upon a combination of train, car and engine-mileage, with results so close to those produced by the Hillman method that they were accepted by the defendants.

The results of divisions of cost between freight and passenger and resulting net revenue in this case will appear later in this report.

XVII.

Net Return from Intrastate Passenger and Freight Business on Property Valuations Assigned to Each Respectively.

Northern Pacific Case.

Great Northern Case.

In the two cases mentioned in the caption of this subdivision we now have the following definitely ascertained elements for determining net return in the two classes of business, viz.:

1st. Gross revenue from state and interstate business, both freight and passenger, respectively, separately stated;

2nd. Relation of revenue per ton per mile and per passenger per mile, respectively, state to interstate;

407 3rd. Gross cost of operation, covering and being an aggregation of cost of state and interstate business, freight and passenger;

4th. The division of cost between the freight and passenger business as herein found and determined.

The element not certainly known and which must be ascertained and determined from the evidence is the relation of cost, state to interstate, in each class of business, freight and passenger. This found as to passenger-miles and ton-miles respectively, and the problem of determining the net revenue from each class can be readily solved.

It is needless here to recount the difficulties this problem presents, growing out of the common use of the same property in contemporaneously conducting both state and interstate transportation. They have been often recited with much particularity in railway rate decisions and are again fully described by experienced railway officials and employés called as witnesses in these cases, and their testimony more than justifies a sug-estion made by Judge Van Devanter in response to some inquiry of counsel when orally delivering his opinion in St. Louis & C. R. Co. v. Allen, in the course of which he made use of the follow- language, viz:

"Taking as your premise that the authority of Congress is supreme and therefore in respect of interstate commerce its authority shall be everywhere equally dominant, I am not sure but that the result would be in some instances where there is such confusion, such an interweaving, as that there could not be a separation, that there the power of Congress would be the dominant power and that the other power would not exist; not on the theory that Congress has any authority over state rates, but that since its authority over interstate

commerce must reach in every part and parcel of it, Congress must say that anything that gets interwoven with it must partake
408 of the exercise of that authority. Otherwise the power of Congress, which is supreme, would not be supreme."

It is conceded by all that there is practically no difference in cost arising from the fact that a transportation is across a state line and not wholly within the state, and there is no dispute but that a substantial difference exists in the cost of doing the short-haul and the long-haul business. This is clearly evidenced, in the freight business, by all rate tariffs, including the schedules of rates prescribed by the Commission's orders and the Commodity Rate Act which gave rise to these suits. The orders covering merchandise rates make the hauling charge for the first two hundred miles twice as large as for the second two hundred miles, and four times as large as for distances beyond the four-hundred-mile point, and a similar relation exists in the legislative commodity rates. There is, of course, some state traffic having a reasonably long haul and some interstate traffic having a short haul, but by far the greater volume of state business belongs to the more expensive short-haul class, and in the interstate business by far the greater part thereof belongs to the less expensive long-haul class. This is established by the fact that in the Northern Pacific case, for the year ending June 30, 1908, as the evidence shows, there were 960,709,494 ton-miles of interstate traffic touching Minnesota, with an average haul of 485.3 miles as against 130,580,-988 ton-miles of state traffic with an average haul of only 104.52 miles. (Ex. 80—Elliott.)

In the Great Northern case, for the year ending June 30, 1908, the evidence shows 1,952,426,967 ton-miles of interstate traffic touching Minnesota, with an average haul of 411.8 miles, as against 171,-317,766 ton-miles of state traffic with an average haul of only 113.3 miles. (Ex. 53—Ward.) State traffic is always burdened with the expense of two terminals within the state, whereas interstate traffic very general is charged with the expense of but one terminal, and as to overhead or transstate shipments in carload lots, as is a
409 very considerable part of the business, no such expense is incurred beyond the comparatively small yard expense in the making up and handling of through trains.

Doubtless the most marked difference in transportation cost depends upon whether the freight handled is through or local with respect to the several operating divisions of the line. That is, freight hauled over less than one division on local or peddling trains, as they are called, is known as local freight, and freight hauled over one or more divisions on through trains is known as through freight on such divisions, and this without reference to whether it is state or interstate traffic. A divisional distance consists, in general, of from about 110 to 150 miles, the same constituting an engine-run. There is, of course, some intrastate traffic which moves on through trains, but the greater part thereof is local freight. There is also a considerable amount of interstate traffic which moves on local trains, but by far the greater part thereof is through freight, as is shown by the long average haul. It is also true that local trains often carry through

freight and through trains carry local freight in order to secure the most efficient and economical operation.

In view of these and all other conditions attending transportation, as disclosed by the evidence, entering into the question of relative expense, it becomes a difficult matter to determine with any degree of certainty the relation of cost per ton per mile in transporting state and interstate freight respectively, the expense of which is practically all common to both and not subject to allocation. The complainants have produced as witnesses before the Master a very considerable number of able and competent operating men, intimately acquainted with and having a wide knowledge of all the details of railway transportation derived from long personal experience in conducting such business. Their testimony is to the effect that it costs from three to seven times as much per ton per mile to do the intrastate
410 freight business as to do the interstate freight business, and that it costs from twenty-five to fifty per cent per passenger per mile more to do the state passenger business than to do the interstate passenger business. The defendants concede that there is greater cost attending the doing of state business, both passenger and freight, but insist that this increased cost is largely, if not wholly, taken up by the increased revenue per ton and per passenger per mile derived from the state traffic. Their chief reliance is upon the evidence of their expert accountant Mr. Hillman, before mentioned, by the use of whose method, similar in many respects to that devised by him for dividing common items of cost between freight and passenger, in connection with his testimony in support of such method they have endeavored to establish their claim. The tables presented by him as a basis of his testimony are for most items of cost the result of his own personal judgment and opinion, and as to some of them upon which his results are predicated there have been certain material assumptions not justified by the conditions found to exist. Here, too, it is conceded that any material difference of opinion as to division—as there would most likely be with regard to some, if not many, of the items—would effect very substantially different results. Another matter tending to discredit the Hillman method is the wide spread in operating per cent between state and interstate business of some of the companies and the low operating per cent as to state business on some lines as compared with that on others and as compared with the operating per cent generally found to exist on all lines of all business done in the country. Operating per cent is the per cent of gross revenue absorbed by cost of operation, and if we may take the statement of counsel in one of the briefs for defendants, (and it would seem to be a matter as to which the Court might take judicial notice) such operating expense is about 60 per cent of gross revenue generally throughout the country. By
411 the Hillman method percentages of operating expense to revenue after deducting estimated losses from the prescribed rates in the three cases are found to be as follows:

Intrastate passenger, N. P. 58.89; G. N. 67; M. & St. L. 62.54.
Interstate passenger, N. P. 51.69; G. N. 59.2; M. & St. L. 63.67.
Intrastate freight, N. P. 55.21; G. N. 41.51; M. & St. L. 48.19.

Interstate freight, N. P. 54.47; G. N. 60.58; M. & St. L. 85.03.

In the St. Louis case, in the intrastate business, without deducting for estimated loss, the operating expense would have been only 41.9 per cent of intrastate revenue, and in the Great Northern case such operating expense would have been only 39.9 per cent of intrastate revenue. There seems to be no substantial reason for the difference here found to exist on the Northern Pacific when compared with the Great Northern line, and the marked and necessarily conceded difference in density of traffic over these liens and that over the Minneapolis & St. Louis line, the former greatly exceeding the latter, would be expected to produce very different results than those shown by this table of comparisons. The wide disparities and unusual results from comparisons are not adequately explained, and they strongly suggest an improper method of division between the two classes of business.

The Master finds from the weight of testimony that the cost per ton-mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one. He also finds from the evidence that the cost per passenger-mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota.

As a result of the foregoing findings of fact we are now in possession of all the elements for a finding of net revenue derived from the doing of intrastate freight business and intrastate passen-
412 ger business, respectively, and they may be stated as follows for each of the three cases:

Northern Pacific Case.

Net Revenue Derived from Freight Business and Passenger Business Respectively.

Gross Earnings.

The total gross earnings of the Company from all sources, involving any use of the property above valued, within the state of Minnesota for the fiscal year ending June 30, 1908, was $13,682,-983.27. (Complainants' Exhibit 80 B—Elliott, treating rentals as a "net" item of $259,196.65).

The above total amount is made up as follows:

Freight revenue (transportation)	$9,509,077.33
Miscellaneous freight earnings derived from switching, demurrage, storage, etc.	314,431.02
Total freight earnings, including miscellaneous	$9,823,508.35

Total passenger revenue (transportation of persons)	$2,955,868.51
Miscellaneous pas-enger earnings (consisting of mail, express, etc.)	556,670.01
Total passenger earnings	$3,512,538.52
Total freight and passenger earnings	$13,336,046.87

Division Freight Earnings Between Intrastate and Interstate.

Total freight revenue, transportation:

Intrastate	$1,555,342.92	equals 16.356 per cent
Interstate	7,953,734.41	equals 83.644 per cent

413 *Miscellaneous Freight Earnings Divided on Basis of Transportation Revenue.*

Intrastate	$51,428.34	equals 16.356 per cent
Interstate	263,002.68	equals 83.644 per cent

Total freight earnings:

Intrastate	$1,606,771.26	equals 16.356 per cent
Interstate	8,216,737.09	equals 83.644 per cent
Total	$9,823,508.35	equals 100 per cent

Division Passenger Earnings Between Intrastate and Interstate.

Passenger rate:

Intrastate	$1,015,150.34	equals 34.344 per cent
Interstate	1,940,718.17	equals 65.656 per cent

Miscellaneous Passenger Earnings Divided on Basis of Transportation Revenue.

Intrastate	$191,182,75	equals 34.344 per cent
Interstate	365,487.26	equals 65.656 per cent

Total passenger earnings:

Intrastate	$1,206,333.09	equals 34.344 per cent
Interstate	2,306,205.43	equals 65.656 per cent
Total	$3,512,538.52	equals 100 per cent

In addition to the foregoing earnings there was derived from the use of property included in the foregoing valuation certain "miscellaneous income net items" from outside operations (sleeping, parlor and dining cars, etc.), rental received for use of tracks, yards and other property and hire of equipment, amounting in the aggregate to $346,936.40 plus $13,336,046.87 equals $13,682,983.27. (Ex. 80-B—Elliott.)

414 *Operating Expenses.*

Total operating expenses in Minnesota for said year. (Exhibit 80-B—Elliott.)	$7,655,350.20
Total taxes	596,118.51
Total	$8,251,468.71

(Exhibit 80-B—Elliott).

Total net income derived from the use of Minnesota property, included in valuation,—gross earnings from all such sources, $13,682,983.27—less operating expenses and taxes $8,251,468.71, leaves $5,431,514.56 equals 6.021 per cent return of value.

Division of Operating Expenses Between Freight and Passenger.

Of the total operating expenses there was expended in the conduct of the freight business	$5,343,718.25
And in the conduct of the passenger business	2,311,631.95
Total	$7,655,350.20

(Exhibit 79—Elliott.)

Division of Freight Operating Expenses Between Intrastate and Interstate Freight.

The total freight operating expenses—$5,343,718.25 may be fairly and justly divided between the intrastate freight business and the interstate freight business, on either one of two bases:

1. The relation of the average intrastate ton mile cost to the average interstate ton mile cost—"Equated Ton Mile Basis"; and

2. The relation of cost required to produce a given amount of revenue in the intrastate business compared with the cost required to produce the same amount of revenue in the interstate business—"Equated Revenue Basis."

415 As hereinbefore found, during the said year, ending June 30, 1908, it cost said Company at least 2½ times as much on the average to produce a ton mile in the intrastate business as in the interstate busines-.

During said year the relation of revenue per ton per mile derived from the intrastate business was as 1.4387 is to 1.0000, and on the same rates and under like conditions such relation will hereafter continue to be substantially the same.

To divide the total freight operating expenses on the Equated Ton Mile Basis—the relation of cost per ton per mile of intrastate business to the cost per ton per mile of the interstate business being as 2½ is to 1—multiply the actual number of intrastate ton miles by 2½ and the product will be the number of intrastate ton miles which would have been produced by the expenditure which was actually made in the conduct of the intrastate freight business, if the production of a ton mile in the intrastate business on the average had been attended by the same cost as the production of a ton mile in the interstate business on the average,—then add such product to the actual number of interstate ton miles, and the sum will be the total number of ton miles, both intrastate and interstate which would have been produced by the expenditure which was actually made in the conduct of both classes of business if the production of a ton mile in the intrastate business on the average had been attended by the same cost as the production of a ton mile in the interstate business on the average.—this total may be called the "Equated Ton Miles." For the intrastate operating expenses take such percentage of the total freight operating expenses as the number of ton miles so increased—or equated—is of the total number of equated ton miles, and for the interstate operating expenses take such per cent of the total operating expenses as the interstate ton miles is of the total equated ton miles.

To divide such total freight operating expenses on the
416 Equated Revenue Basis, the relation of cost per ton per mile of the intrastate business to the cost per ton per mile of the interstate business, being as 2½ is to 1, and the relation of revenue per ton per mile derived from the intrastate business to the revenue per ton per mile derived from the interstate business, being as 1.4387 is to 1.0000, first determine what—on such facts—is the relation of cost per ton per mile in the intrastate business in proportion to revenue, to the cost per ton per mile in the interstate business in proportion to revenue. This may be done by dividing such ton mile relation by such revenue relation, as follows:

$$\frac{250}{100} \div \frac{1.4387}{1.0000} = \frac{1.7377}{1.0000}$$

It, therefore, appears that the production of a given amount of revenue in the intrastate freight business is attended with greater cost than the production of the same amount of revenue in the interstate freight business, and that such excess of cost is and will be at least 73.77 per cent.

To divide total freight operating expenses on the "Equated Revenue Basis" in accordance with the facts in this case as above stated:

Increase the intrastate earnings by 73.77%, thereby showing what would have been earned by the same actual expenditure in the

conduct of the intrastate business had it been attended with the same relative cost as the intrastate business. Then add the intrastate earnings, as so increased—or equated—to the interstate earnings, thereby ascertaining what would have been earned by the actual expenditure in conducting both intrastate and interstate traffic had the former been attended with the same relative cost as the latter. Then ascertain what proportion of this total represents the intrastate earnings as so increased—or equated—and what proportion represents the interstate earnings, and then ascertain the corresponding proportions of the total cost of the intrastate and interstate freight
417 traffic, and the same will be the cost of intrastate freight business and interstate freight business respectively. (See 163 Fed. 141.)

The equated ton mile basis on the relation of 2½ to 1 is in this case exactly the same as the equated revenue basis on the relation of 1.7377 to 1.0000.

Applying either of these rules to the facts above stated, the total freight operating expenses—$5,343,718.25—is divided as follows:

Intrastate	$1,355,273.82=25.362%
Interstate	3,988,444.43=74.638%
	$5,343,718.25=100%

Division of Total Passenger Operating Expenses Between Intrastate Passenger and Interstate Passenger.

As hereinbefore stated, it is found that during said year it cost said Company to produce an intrastate passenger mile in said State 1.15 times as much as to produce an interstate passenger mile in said State.

The evidence shows that the average revenue per passenger mile in the intrastate business was $1.9404 (computed from 80 Elliott), and in the interstate business was 1.9228 (computed from 80 Elliott). The relation of such revenue, intrastate to interstate, is as 1.0092 to 1.0000. The relation of cost in proportion to revenue is:

$$\frac{115}{100} \div \frac{1.0092}{1.0000} = \frac{1.1395}{1.0000} \text{ or } 1.1395 \text{ to } 1.0000.$$

Such total passenger operating expenses may fairly and justly be divided between the intrastate business and the interstate business on the "Equated Passenger Mile Basis," or the "Equated Revenue Basis," in like manner as that hereinbefore stated for the
418 division of the freight operating expenses between the intrastate freight business and interstate freight business on the two similar bases heretofore explained.

The "Equated Passenger Mile Basis," on relation of cost per passenger mile intrastate to interstate, 1.15 to 1, is exactly the same as the "Equated Revenue Basis" on the relation of 1.1395 to 1.0000.

Dividing the total passenger operating expenses, $2,311,631.95—100%—on either of such bases, there will be assigned to the intrastate passenger business $863,325.18=37.347%, and to the interstate passenger business $1,448,306.77=62.653%.

Apportionment of Taxes to Various Classes of Business.

The total taxes and assessments paid in Minnesota by said Company in said year amounted to $596,118.51. Such sum may be fairly and justly apportioned to the various classes of business on the gross earnings basis as follows:

Intrastate freight	$71,820.32
Interstate freight	367,286.53
Intrastate passenger	53,924.08
Interstate passenger	103,087.58
	$596,118.51

Apportionment of Other Income to Various Classes of Business on the Gross Earnings Basis.

During said year the Company received for "Rentals" and for "Hire of Equipment" over and above amounts paid on account thereof in Minnesota, $259,196.65, which amount may justly and fairly be distributed between the various classes of business, on the gross earnings basis.

In addition to the last mentioned sum, there was received from "Outside Operations" (consisting of sleeping, dining, chair and parlor cars, etc.), $87,739.75, which may fairly and justly
419 be divided between the intrastate passenger business and the interstate passenger business on the passenger earnings basis.

On account of the two items last mentioned there should be added to the earnings derived from each class of business the following sums:

Intrastate freight	$31,227.99
Interstate freight	159,698.85
Total	$190,926.84
Intrastate passenger	$53,579.92
Interstate passenger	102,429.64
Total	$156,009.56

(See Exhibit 80—B Elliott).

Net Income Applicable to Return Upon Valuation of Property Apportioned to the Various Classes of Business.

If from such total receipts so assigned to each class of intrastate business as hereinbefore stated, there be deducted the sum of the operating expenses and taxes so assigned to each such class of intrastate business, we have the following results:

Intrastate net freight income $210,905.11 yields sufficient for an annual return on $10,867,837 of only 1.941%.

NOTE.—The losses which would have resulted from the application of the commodity rates enjoined have not been deducted. From Exhibit 63—Johnson, it is estimated that the intrastate freight earnings in Minnesota would have been reduced in said year by the application of such rates $21,493.67, which would effect a reduction in the rate of return last mentioned.

Intrastate passenger income $342,663.75 sufficient to yield an annual return upon $8,159,782 of only 4.2%.

420 Total intrastate (freight and passenger) income, $553,568.86, sufficient to yield an annual return on $19,027,619 (total valuation assigned to all intrastate business) of only 2.909%.

The foregoing data, deductions and results are included or deducible from the table following:

(Here follows table marked p. 420½.)

323%.

RESULTS IN NORTHERN PACIFIC CASE

Using Earnings, Operating Expenses, Miscellaneous Income and Taxes shown in Complainant's Exhibits 79, 80 and 80-B Elliott. Division of Operating Expenses between Intrastate and Interstate as per bases shown in body of statement.
Year Ending June 30, 1908.

STATE OF MINNESOTA.

	Intrastate		Interstate		Total	
Freight Revenue	$1,555,342.92	16.356%	$7,953,734.41	83.644%	$9,509,077.33	100%
Miscellaneous Freight Earnings divided on basis of revenue	51,428.34	16.356%	263,002.68	83.644%	314,431.02	100%
Freight Earnings	$1,606,771.26	16.356%	$8,216,737.09	83.644%	$9,823,508.35	100%
Passenger Revenue	$1,015,150.34	34.344%	$1,940,718.17	65.656%	$2,955,868.51	100%
Miscellaneous Passenger Earnings divided on basis of revenue	191,182.75	34.344%	365,487.26	65.656%	556,670.01	100%
Passenger Earnings	$1,206,333.09	34.344%	$2,306,205.43	65.656%	$3,512,538.52	100%

OPERATING EXPENSES:	Freight	Passenger	Total
Transportation Expenses	$3,118,371.80	$1,089,268.66	$4,207,640.45
Maintenance of Way and Structures	799,220.09	650,372.91	1,449,593.00
Maintenance of equipment	1,257,377.42	410,636.52	1,668,013.94
Traffic expenses	69,804.67	89,534.61	159,339.28
General expenses	98,844.18	71,829.25	170,673.43
Total	$5,343,718.25	$2,311,631.96	$7,655,350.20

BASES FOR DIVIDING OPERATING EXPENSES:

Freight—On basis of 1 Intrastate ton mile costing as much as 2.5 Interstate ton miles.

EQUATED TON MILE BASIS

	Actual			Equated		Proportion	Operating Exps.
Intrastate ton miles	130,580,988	× 2.5	=	326,452,470	=	25.362%	$1,355,273.82
Interstate ton miles	960,709,494	× 1.0	=	960,709,494	=	74.638%	3,988,444.43
	1,091,290,482			1,287,161,964	=	100.%	$5,343,718.25

EQUATED REVENUE BASIS

	Actual Revenue			Equated Revenue		
Intrastate ton miles	$1,555,342.92	× 1.7377	=	$2,702,719.39	=	25.362%
Interstate ton miles	7,953,734.41	× 1.	=	7,953,734.41	=	74.638%
				$10,656,453.80	=	100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 115 Interstate passenger miles.

EQUATED PASSENGER MILE BASIS

Intrastate passenger miles	52,317,140	× 1.15	=	60,164,711	=	37.347%	$863,325.18
Interstate passenger miles	100,931,180	× 1.00	=	100,931,180	=	62.653%	1,448,306.77
	153,248,320			161,095,891	=	100.%	$2,311,631.95

EQUATED REVENUE BASIS

Intrastate passenger miles	$1,015,150.34	× 1.1395	=	$1,156,763.81	=	37.347%
Interstate passenger miles	1,940,718.17	× 1.	=	1,940,718.17	=	62.653%
				$3,097,481.98	=	100.%

Divided on basis of earnings	Freight	$9,823,508.35	= 73.661%
	Passenger	3,512,538.52	= 26.339%
Total		$13,336,046.87	= 100.%

		Freight		Passenger	
Rentals received less rental paid	73.661% of	$241,023.58	= $190,926.84	$66,269.81	= 26.339%
Hire of equipment	73.661% of	18,173.10			
Taxes	73.661% of	596,118.61	= 439,106.85	157,011.66	= 26.339%

Summary of Results (Valuation divided on basis of Earnings)

	Intrastate		Interstate		Total	
Freight Business:						
Earnings	$1,606,771.26	= 16.356%	$8,216,737.09	= 83.644%	$9,823,508.35	= 100%
Rentals and hire of equipment	31,227.99	= 16.356%	159,698.85	= 83.644%	190,926.84	= 100%
	$1,637,999.25	= 16.356%	$8,376,435.94	= 83.644%	$10,014,435.19	= 100%
Operating expenses	$1,355,273.82		$3,988,444.43		$5,343,718.25	
Taxes	71,820.32	= 16.356%	367,286.53	= 83.644%	439,106.85	= 100%
	$1,427,094.14		$4,355,730.96		$5,782,825.10	
Income applicable to valuation	$210,905.11		$4,020,704.98		$4,231,610.09	
Valuation 73.661% of $90,204,545.00	10,867,837.00	= 16.356%	55,577,733.00	= 83.644%	66,445,570.00	= 100%
Annual return	1.941%		7.234%		6.369%	
Passenger Business:						
Earnings	$1,206,353.09	= 34.344%	$2,306,205.43	= 65.656%	$3,512,538.52	= 100%
Outside operations	30,133.34	= 34.344%	57,606.41	= 65.656%	87,739.75	= 100%
Rentals and hire of equipment	23,446.58	= 34.344%	44,823.23	= 65.656%	68,269.81	= 100%
	$1,259,913.01	= 34.344%	$2,408,635.07	= 65.656%	$3,668,548.08	= 100%
Operating expenses	$983,328.18		$1,448,306.77		$2,311,631.95	
Taxes	83,924.08	= 34.344%	103,087.58	= 65.656%	187,011.66	= 100%
	$917,249.36		$1,551,394.35		$2,468,643.61	
Income applicable to valuation	$342,663.73		$857,240.72		$1,199,904.47	
Valuation 26.339% of $90,204,545.00	8,158,783.00	= 34.344%	15,609,193.00	= 65.656%	23,768,976.00	= 100%
Annual return	4.200%		5.494%		5.050%	
Total Business:						
Income applicable to valuation	$553,568.84		$4,877,945.70		$5,431,514.56	
Valuation	19,027,619.00		71,176,926.00		90,204,545.00	
Annual return	2.909%		6.853%		6.021%	

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $21,493.67, nor any similar losses that would have accrued on Interstate commodity business.

421 NOTE 1.—In this statement the valuation of the property is divided upon the revenue basis between freight and passenger and inter and intra of each.

If it be considered that operating expenses more correctly measure the use of the property than earnings, the division would be as follows:

Intra Freight.

Dividing Valuation on Operating Expense Basis.

Intra freight operating expenses.....	$1,355,273.82=	17.7%
All operating expenses.....	7,655,350.20=	100%
17.7% of $90,204,545 valuation=	16,166,204	
Intra income—freight.....	210,905.11	
Annual return.....		1.304%

Intra Passenger.

Intra Passenger operating expenses.....	$863,325.18=	11.28%
All operating expenses.....	7,655,350.20=	100%
11.28% of $90,204,545 valuation=	10,175,073	
Intra income—passenger.....	342,663.75	
Annual return.....		3.368%

The rate of return on interstate freight and passenger would be increased over that shown in the statement.

There were introduced in evidence various statements by defendants for the purpose of showing what they claimed the actual net Minnesota intrastate freight and Minnesota intrastate passenger incomes were in the business of the fiscal year ending June 30, 1907, but the same, when taken in connection with all the testimony, fail to show that the rates complained of were not confiscatory. The defendants offered no corresponding statements with respect to such business for the year ended June 30, 1908.

422 Great Northern Case.

Net Revenue Derived from Freight Business and Passenger Business Respectively.

Gross Earnings.

The total gross earnings of the Company from all sources, involving any use of the property above valued within the state of Minnesota, for the fiscal year ending June 30, 1908, was $20,831,317.57. (See Exhibit 30—Parker, 49—Martin, 53—Ward and reports to the State, fiscal year ending June 30, 1908.)

The above total amount is made up as follows:

Freight revenue transportation	$15,658,661.07
Miscellaneous freight earnings derived from switching, demurrage, storage, etc.	278,337.78
Total freight earnings including miscellaneous	$15,936,998.85
Total passenger revenue (transportation of persons).	3,640,627.45
Miscellaneous passenger earnings (consisting of mail, express, etc.)	698,281.45
Total passenger earnings	$4,338,908.90
Total freight and passenger earnings	20,275,907.75

Division of Freight Earnings Between Intrastate and Interstate.

Total freight revenue transportation:

Intrastate	$2,366,359.02=15.112%
Interstate	13,292,302.05=84.888%

Miscellaneous freight earnings divided on basis of transportation revenue:

Intrastate	$42,062.41=15.112%
Interstate	236,275.37=84.888%

423

Total freight earnings:

Intrastate	$2,408,421.43=15.112%
Interstate	13,528,577.42=84.888%
Total	$15,936,998.85=100%

Division Passenger Earnings Between Intrastate and Interstate.

Passenger revenue:

Intrastate	$1,750,522.02=48.083%
Interstate	1,890,105.43=51.917%

Miscellaneous passenger earnings divided on basis of transportation revenue:

Intrastate	$335,754.66=48.083%
Interstate	362,526.79=51.719%

Total passenger earnings:

Intrastate	$2,086,276.67=48.083%
Interstate	2,252,632.22=51.917%

In addition to the foregoing earnings there was derived from the use of the property included in the foregoing valuation certain mis-

cellaneous income from outside operations (sleeping, parlor, dining cars, etc.), rentals received for use of tracks, yards and other property and hire of equipment amounting in the aggregate to $555,409.82+ $20,275,907.75=$20,831,317.57. (See exhibits and reports above cited.)

Operating Expenses.

Total operating expenses in Minnesota for said year (See Exhibit 47—Martin)	$11,811,414.35
Total taxes	839,878.11
Total	$12,651,292.46

424

Total net income derived from the use of property in Minnesota—gross earnings from all sources	$20,831,317.57
Less operating expenses and taxes	12,651,292.46
Leaves	$8,180,025.11

=5.909% on $138,425,291 total Minnesota valuation.

Division of Operating Expenses Between Freight and Passenger.

Of the total operating expenses there was expended in the conduct of the freight business	$8,141,355.61
And in the conduct of the passenger business	3,670,058.74
Total	$11,811,414.35

(See Exhibit 47—Martin.)

Division of Freight Operating Expenses Between Intrastate and Interstate.

The total freight operating expenses—$8,141,355.61—may be justly and fairly divided between the intrastate freight business and the interstate freight business on either of two bases:

1. The relation of the average intrastate ton mile cost to the average interstate ton mile cost—"Equated Ton Mile Basis;" and

2. The relation of cost required to produce a given amount of revenue in the intrastate business compared with the cost required to produce the same amount of revenue in the interstate business—"Equated Revenue Basis."

As hereinbefore found, it did during said year, cost said Company at least 2½ times as much on an average to produce a ton mile in the intrastate business as in the interstate business.

425 During said year the relation of revenue per ton per mile derived from intrastate business to the revenue per ton mile derived from the interstate business was as 2.02894 is to

1.00000 (53—Ward); and on the same rates and under like conditions such relation will hereafter continue to be substantially the same.

The relation of cost per ton per mile in the intrastate business in proportion to revenue to the cost per ton per mile in the intrastate business in proportion to revenue is..... $\frac{250}{100} \div \frac{2.02894}{1.00000}$

or 1.23217 to 1.00000. That is to say, the production of a given amount of revenue in the intrastate freight business is attended with greater cost than the production of the same amount of revenue in the interstate freight business, and such excess of cost is and will be at least 23.217%.

The division of the total freight operating expenses on the Equated Ton Mile Basis or on the Equated Revenue Basis may be effected in the same manner as that heretofore described in the Northern Pacific case.

The Equated Ton Mile Basis on the relation of 2½ to 1 is in this case exactly the same as the Equated Revenue Basis on the relation of 1.23217 to 1.

Applying either of the rules above referred to to the facts in this case as above stated, the total freight operating expenses, $8,141,-355.61, is divided as follows:

Intrastate	$1,464,629.87=17.99%
Interstate	6,676,725.74=82.01%
	$8,141,355.61=100%

Division of Total Passenger Operating Expenses Between Intrastate Passenger and Interstate Passenger.

As hereinbefore stated it is found that during said year it cost said Company to produce an intrastate passenger mile, in said
426 State, 1.15 times as much as to produce an interstate passenger mile in said State.

The evidence shows that the average revenue per passenger per mile in the intrastate business was 1.9016, and in the interstate business was 2.0469. (53—Ward.)

The relation of such revenue intrastate to interstate is as 0.92901 is to 1.0000.

The relation of cost in proportion to revenue is

$$\frac{115}{100} \div \frac{0.92901}{1.00000} = \frac{1.2378}{1.00000} \text{ or } 1.2378 \text{ to } 1.$$

Such total passenger operating expenses may fairly and justly be divided between the intrastate business and the interstate business on the Equated Passenger Mile Basis, or the Equated Revenue Basis, in like manner as that hereinbefore stated in the Northern Pacific

case for the division of the freight operating expenses between the intrastate freight business and the interstate freight business, on the two similar bases there explained.

The Equated Passenger Mile Basis on the relation of cost per passenger mile intrastate to interstate, 1.15 to 1. is exactly the same in this case as the Equated Revenue Basis on the relation of 1.2378 to 1.

Dividing the total passenger operating expenses—$3,670,058.74—100%—on either of such bases, there will be assigned to intrastate passenger business $1,960,215.07=53.411%, and to the interstate passenger $1,709,843.67=46.589%.

Apportionment of Taxes to Various Classes of Business.

The total taxes and assessments paid in Minnesota by said Company in said year amounted to $839,878.11. Such sum may be fairly and justly apportioned to the various classes of business on the gross earnings basis as follows:

427	Intrastate freight	$99,761.00
	Interstate freight	560,383.19
	Intrastate passenger	86,421.46
	Interstate passenger	93,312.46
	Total	$839,878.11

Apportionment of Other Income to Various Classes of Business on Gross Earnings Basis.

During said year the Company received for rentals and for hire of equipment over and above amounts paid on account thereof in Minnesota $462,763.95, which amount may justly and fairly be distributed between the various classes of business on the gross earnings basis.

In addition to the said last mentioned sum there was received from outside operations (consisting of sleeping, dining, chair and parlor cars, etc.) $92,645.87, which may fairly and justly be divided between the intrastate passenger business and the interstate passenger business on the passenger earnings basis.

On account of the two items last mentioned there was added to the earnings derived from each class of business the following sums:

Intrastate freight	$54,976.35
Interstate freight	308,756.11
	$363,732.46
Intrastate passenger	$92,164.22
Interstate passenger	99,513.14
	$191,677.36

(See reports to the State for the year ending June 30, 1908.)

428 *Net Income Applicable to Return upon Valuation of Property Apportioned to the Various Classes of Business.*

If from such total receipts so assigned to each class of intrastate business as hereinbefore stated there be deducted the sum of the operating expenses and taxes so assigned to each such class of intrastate business, we have the following results:

Intrastate freight, income, $898,997.81, sufficient to yield an annual return on $16,442,200 of only 5.468%.

NOTE.—The losses which would have resulted from the application of the commodity rates enjoined have not been deducted. The same are shown by Exhibit 22—Parker to be $87,261.43 (and by Exhibit G—Hillman, Table 11, $129,852.53). Deducting the amount shown by Complainants—$87,261.43—less 4% taxes—$3,490.46—leaves a net deduction $83,770.97, which subtracted from net intrastate freight income as above stated, $898,997.81, would leave $815,226.84, sufficient to yield an annual return on the value above stated (valuation not reapportioned on account of change in revenue) of 4.958%. And if the amount of such losses as estimated by the defendants be taken, the rate of return would be less than the figure last stated.

Intrastate passenger income $131,804.37 is sufficient to yield an annual return upon $14,243,633 of only 0.925%.

Total intrastate (freight and passenger) income (estimated commodity losses not deducted), $1,030,802.18 is sufficient to yield an annual return on $30,685,833 (total valuation assigned to all intrastate business) of only 3.359%.

Deducting the commodity losses, less the taxes, as estimated by complainants as aforesaid, the total intrastate (freight and passenger) income would be sufficient to yield an annual return on total value assigned to all intrastate business of only 3.086%.

The foregoing data, deductions and results are included in or deducible from the table following:

(Here follows table, marked p. 428½.)

RESULTS IN GREAT NORTHERN CASE.

Using Complainants' Exhibits 47 and 48—Martin and 53—Ward, together with reports of Great Northern Railway Co., Minneapolis Western Railway and Duluth Terminal Railway to State of Minnesota. Division of Operating Expenses, Miscellaneous Earnings, Outside Operations, Rentals, Hire of Equipment and Taxes between Intrastate and Interstate as shown in the body of statement. Year Ending June 30, 1906.

	Intrastate		Interstate		Total	
Freight revenue	$2,366,359.02	= 15.112%	$13,292,302.05	= 84.888%	$15,658,661.07	= 100%
Miscellaneous freight earnings divided on basis of revenue	42,062.41	= 15.112%	236,275.37	= 84.888%	278,337.78	= 100%
Freight earnings	$2,408,421.43	= 15.112%	$13,528,577.42	= 84.888%	$15,936,998.85	= 100%
Passenger revenue	$1,750,522.02	= 48.063%	$1,890,105.43	= 51.917%	$3,640,627.45	= 100%
Miscellaneous passenger earnings divided on basis of revenue	335,754.66	= 48.063%	362,526.79	= 51.917%	698,281.45	= 100%
Passenger earnings	$2,086,276.68	= 48.063%	$2,252,632.22	= 51.917%	$4,338,908.90	= 100%

Operating Expenses:	Freight	Passenger	Total
Transportation expenses	$3,921,805.03	$1,471,759.25	$5,393,564.28
Maintenance of way and structures	1,905,856.44	1,328,835.87	3,234,692.31
Maintenance of equipment	2,034,122.76	651,586.24	2,685,709.00
Traffic expenses	131,311.40	116,530.14	247,841.54
General expenses	148,259.98	101,347.24	249,607.22
	$8,141,355.61	$3,670,058.74	$11,811,414.35

Basis for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 2.5 Interstate ton miles.

Equated Ton Mile Basis

	Actual			Equated		Proportion	Operating Exps.
Intrastate ton miles	171,317,766	× 2.5	=	428,294,415	=	17.99%	$1,464,629.87
Interstate ton miles	1,952,426,967	× 1.0	=	1,952,426,967	=	82.01%	6,676,725.74
	2,123,744,733			2,380,721,382	=	100.%	$8,141,355.61

Equated Revenue Basis

	Actual Revenue			Equated Revenue		
Intrastate ton miles	$2,366,359.02	× 1.23217	=	$2,915,756.39	=	17.99%
Interstate ton miles	13,292,302.05	× 1.	=	13,292,302.05	=	82.01%
				$16,208,058.64	=	100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 115 Interstate passenger miles.

Equated Passenger Mile Basis

Intrastate passenger miles	92,053,657	× 1.15	=	105,861,706	=	53.411%	$1,960,215.07
Interstate passenger miles	92,341,852	× 1.	=	92,341,852	=	46.589%	1,709,843.67
	184,395,509			198,203,558	=	100.%	$3,670,058.74

Equated Revenue Basis

Intrastate passenger miles	$1,750,522.02	× 1.2378	=	$2,166,796.16	=	53.411%
Interstate passenger miles	1,890,105.43	× 1.	=	1,890,105.43	=	46.589%
				$4,056,901.59	=	100.%

Divided on basis of earnings { Freight $15,936,998.85 = 78.6% ; Passenger 4,338,908.90 = 21.4% }

Total $20,275,907.75 = 100.%

	Totals	Freight 78.6%	Passenger 21.4%
Rentals received	$378,934.32		
Rentals paid	56,594.84		
Net rentals received	$322,339.48		
Hire of equipment received	140,424.47		
	$462,763.95	$363,732.46	$99,031.49
Taxes paid	839,878.11	660,144.19	179,733.92

Summary of Results.

Freight Business:	Intrastate		Interstate		Total	
Earnings	$2,408,421.43	= 15.112%	$13,528,577.42	= 84.888%	$15,936,998.85	= 100%
Proportion of rentals and hire of equipment	54,967.25	= 15.112%	308,765.21	= 84.888%	363,732.46	= 100%
	$2,463,388.68	= 15.112%	$13,837,342.63	= 84.888%	$16,300,731.31	= 100%
Operating expenses	$1,464,629.87		$6,676,725.74		$8,141,355.61	
Taxes	99,761.00	= 15.112%	560,383.19	= 84.888%	660,144.19	= 100%
	$1,564,390.87		$7,237,108.93		$8,801,499.80	
Income applicable to valuation	$898,997.81		$6,600,233.70		$7,499,231.51	
Valuation 78.6% of $138,425,291.00	16,442,200.00	= 15.112%	92,360,079.00	= 84.888%	108,802,279.00	= 100%
Annual return on valuation	5.468%		7.146%		6.893%	

Passenger Business:						
Earnings	$2,086,276.68	= 48.063%	$2,252,632.22	= 51.917%	$4,338,908.90	= 100%
Outside operations	44,546.91		48,096.96		92,645.87	
Proportion of rentals and hire of equipment	47,617.31		51,414.18		99,031.49	
	$2,178,440.90	= 48.063%	$2,352,145.36	= 51.917%	$4,530,586.26	= 100%
Operating expenses	$1,960,215.07		$1,709,843.67		$3,670,058.74	
Taxes	86,421.46	= 48.063%	93,312.48	= 51.917%	179,733.92	= 100%
	$2,046,636.53		$1,803,156.13		$3,849,792.66	
Income applicable to valuation	$131,804.37		$548,989.23		$680,793.60	
Valuation 21.4% of $138,425,291.00	14,243,633.00	= 48.063%	15,379,379.00	= 51.917%	29,623,012.00	= 100%
Annual return on valuation	0.925%		3.570%		2.298%	
Freight and Passenger Business:						
Total income in Minnesota applicable to valuation	$1,030,802.18		$7,149,222.93		$8,180,025.11	
Valuation	30,685,833.00		107,739,458.00		138,425,291.00	
Annual return	3.359%		6.636%		5.909%	

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $87,261.43, nor a loss of $208,923.43 that would have accrued on Interstate commodity business in Minnesota. (Complainants' Exhibits 22, 24, 26 and 28—Parker.)

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429 NOTE 1.—In this statement valuation of the property is divided upon the revenue basis between Freight and Passenger, and inter and intra of each.

If it be considered that operating expenses more correctly measure the use of the property than earnings, the division would be as follows:

Intra Freight.

Intra Freight operating expenses.....	1,464,629.87	=12.4%
All operating expenses.....	11,811,414.35	= 100%
12.4% of $138,425,291 valuation	= 17,164,738	
Income—Intra Freight.....	898,997.81	
Annual return	5.237%	

Intra Passenger.

Intra Passenger operating expenses.....	$1,960,215.07	=16.6%
All operating expenses.....	11,811,414.35	= 100%
16.6% of $138,425,291 valuation	= 22,978,596	
Income—Intra Passenger	131,804.37	
Annual return	0.574%	

The rate of return on interstate freight and interstate passenger would be increased over that shown in the statement.

NOTE 2.—The intrastate freight loss which would have resulted by the application of Chapter 232 was estimated by Hillman's Exhibit G, Table 10, at $129,852.53. By Parker's Exhibit 22 it was estimated at $87,261.43. In the statement no deduction has been made from intrastate freight revenue on account of such loss.

The amount of intrastate net freight revenue shown by the statement is	$898,997.81
Subtracting loss shown by Exhibit 22—Parker.....	87,261.43
The new net intrastate revenue would be.....	$811,736.38

430 Divided by the proportion of value assigned to intrastate freight, to-wit, $16,442,200, the net annual return of 4.937% on intrastate freight will be the result instead of 5.468% as shown on the statement. (The computation producing the rate of return first above mentioned—4.937—does not take into account the reapportionment of value to intrastate freight resulting from the reduction of intra gross freight earnings. If such reapportionment were made the value of property so assigned would be somewhat decreased, and the rate of return somewhat increased over 4.937).

NOTE 3.—Hillman does not show the intrastate freight loss which did result from the application of the merchandise rates complained of. Parker by his Exhibit 22 did show the same to be $178,978.96. What would be the net annual return on value of property apportioned to intrastate freight if injunction continues against com-

modity rates, and old merchandies rates prior to orders of September 6, 1906, and May 3, 1907, be fully restored?

The statement shows net intrastate freight pays.....	$898,997.81
Add merchandise loss	178,978.96
And the new net intrastate freight income would be.	$1,077,976.77

which divided by value assigned to intrastate freight—$16,442,200—(not reapportioned to correspond with increased intrastate earnings), less than 6.556% would be produced. But if valuation be reapportioned to correspond with increased intrastate gross earnings, $17,115,651.00, valuation would be assigned to intrastate freight business, which divided into the new net intrastate freight earnings—$1,077,976.11—then 6.293% return on intrastate freight business would be shown on basis of old rates, merchandise and commodity.

NOTE 4.—The statement shows passenger intrastate net income applicable to valuation to be $131,804.37, and the rate of return to be less than 1%, to-wit, 0.925%. Tilton, by his Exhibit 37, shows a passenger intrastate loss of $470,673.17. If this be added
431 to $131,804.37, a new net intra passenger income applicable to valuation of $602,477.54 would result. The value apportioned to intra passenger business in the statement on the basis of the gross earnings as they were was $14,243,633. If the passenger rates were restored to the 3 cent basis, and gross earnings thereby increased, an apportionment of value on basis of increased earnings would assign to intra passenger $16,914,224.00, which divided into the new net income—$602,477.54—would produce only 3.56% return on intra passenger business if the old rates were restored.

There were introduced in evidence various statements by defendants for the purpose of showing what they claim the actual net Minnesota intrastate freight and Minnesota intrastate passenger income were on the business of the fiscal year ending June 30, 1908, (see Exhibit G—Hillman).

The gross receipts of said Company from all sources in Minnesota used in the foregoing table exceeds the gross receipts charged against the Company in Minnesota by defendants' evidence (excluding income on investments), $146,528.27, of which more than $140,000 was on account of hire of equipment not taken into account by defendants in their tables. There is no dispute between the parties as to the total amount of operating expenses chargeable to the business of the Company done within the State.

There is considerable difference between the parties in the distribution of revenue to the various classes of business, intrastate freight and interstate freight, intrastate passenger and interstate passenger, and also a considerable difference as to the assignment of operating expenses to each such class of business, which difference, as respects the operating expenses, is due to the methods of division of the total amount thereof employed by the witness Hillman. As hereinbefore stated, the results obtained by the employment of his

methods of division of operating expenses are found not to be correct, fair or just.

If the distribution of the total revenue to such various classes of business be made as the defendants' exhibits indicate, and
432 the division of the operating expenses between the freight department and the passenger department be made as hereinbefore found to be fair and just, and the division of freight cost between the intrastate business and the interstate business be made as hereinbefore found to be fair and just, and the division of passenger cost between the intrastate business and interstate business be made as hereinbefore found to be just and fair, the result would not affect the final decree recommended to be entered.

Apportionment of Value Between Freight and Passenger Business and Between Intrastate and Interstate Business of Each.

Minneapolis & St. Louis Case.

Total value of the property of the Minneapolis & St. Louis Company used in the fiscal year ending June 30, 1907, in the conduct of its business in Minnesota, was, as hereinbefore found, $21,608,464.

Such total value may be fairly and justly apportioned between the freight business and the passenger business on the gross earnings basis—that is, assign to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both. The value so apportioned to the freight and passenger business may in similar manner be justly and fairly divided on the gross earnings basis between the intrastate business and the interstate business of each.

A statement of freight and passenger revenues in Minnesota, for the year ending June 30, 1907, divided between Minnesota intrastate business and Minnesota interstate business, is as follows:

433

	Minnesota intrastate.	Minnesota interstate.	Total.
Freight revenue....	$534,696.66	$1,180,155.91	$1,714,852.57
Passenger revenue..	352,008.52	298,258.28	650,266.80
	$856,705.18	$1,478,414.19	$2,365,119.37
Per cent.....	37.49%	62.51%	100%

(Ex. 33—Scott, Section D.)

The following is a summary of the apportionment of total value to the different classes of business in Minnesota:

Summary of Apportionment of Total Value to the Different Classes of Business in Minnesota.

Total value of property used in transportation business in Minnesota, for the fiscal year ending June 30, 1907		$21,608,464.00
Total value apportioned to freight business, 72.51%, or	$15,668,297.24	
Total value apportioned to passenger business, 27.49%, or	5,940,166.76	
Total		$21,608,464.00
Assign to intrastate freight business 31.180% of total value apportioned to freight business		$4,885,673.71
Assign to interstate freight business 68.820% of total value apportioned to freight business		10,782,623.53
Assign to intrastate passenger business in Minnesota 54.13% of the total value assigned to passenger business		3,215,339.44
Assign to interstate passenger business in Minnesota 45.87% of total value assigned to passenger business in Minnesota		2,724,827.32
		$21,608,464.00

If such valuation were to be apportioned on the same basis but according to the figures shown by defendants' evidence (see Ex. L—Hillman, Table 14), the final decision would not be changed.

To yield an annual return of 7% upon the value so assigned, there would be required for intrastate freight	$341,997.15
For interstate freight	754,783.64
For intrastate passenger	225,073.76
For interstate passenger	190,737.91
Total	$1,512,592.48

The defendants introduced testimony and exhibits which show what they claim to have been the net income (after paying only operating expenses and taxes), derived from the intrastate freight business, and from the intrastate passenger business as follows:

Total income, all sources, applicable to intrastate freight	$225,890.00
(Defendants' Ex. L.—Hillman, Table 12.)	
Total income, all sources, applicable to intrastate passenger	148,721.70
(Defendants' Ex. L.—Hillman, Table 13.)	

Each of the amounts so claimed by defendants is in excess of the actual net income from all sources, derived from such classes of business respectively, over and above operating expenses and taxes. The method employed by the defendants for the ascertainment of the amount of operating expenses chargeable to each such class of business was not correct, fair or just, and resulted in assign-
435 ing to each such class of business an amount much less than was in fact expended by said Company in said year in the conduct thereof.

* * * * * * *

The total net earnings of said Company for said year 1907 in Minnesota, from all sources, which involved the use of the property included in such valuation was $895,977.66, sufficient to yield an annual income upon such value of $21,608,464 of only 4.14%. (See Ex. 33—Scott.)

The cost of conducting each class of the intrastate business covered by the rates complained of is greater in proportion to the revenue derived from each such class of business than was the cost of conducting the corresponding class of interstate business of said Company in said year in said state, and the amount of net income derived from each such class of intrastate business is less than sufficient to yield an annual return of 4.14% upon the proportion of the value of the whole property which was used in the conduct of each such class of business, and which is properly chargeable thereto.

Net Earnings.

(Entire Railway System of said Company.)

The net earnings, after paying only operating expenses and taxes, from 1903 to 1909, both inclusive, were as follows:

Net Earnings.

1903.	1904.	1905.	1906.
$1,398,895.30	$1,229,524.49	$1,277,870.96	$1,511,961.99

1907.	1908.	1909.
$1,419,822.54	$1,220,862.21	$1,286,494.08

(Ex. 33—Scott.)

436 *Net Earnings.*

(Minnesota.)

The net earnings of said Company, after paying only operating expenses and taxes, on all of its business in Minnesota, from all sources, involving any use of the property valued herein, from 1903 to 1909, both inclusive, were as follows:

Net Earnings.

1903.	1904.	1905.	1906.
$1,222,941.77	$1,052,478.74	$1,054,853.35	$1,109,260.56

1907.	1908.	1909.
$895,977.66	$742,377.46	$794,472.58

Interest Charges.

As of date April 30, 1908, the annual interest charges which said Company was and is subject to pay on account of bonds was $952,583.

If this be apportioned among states on the basis of gross earnings, the amount chargeable to each state is as follows:

Minnesota	$690,517
Iowa	244,120
South Dakota	17,946
	$952,583

(Exhibit 6—Scott.)

The par value of such bonds on said date was $20,011,800. (Exhibit 6—Scott.)

Effect of Rates Complained of Upon Revenue. Merchandise Rates.

If the merchandise rates complained of had been in effect during the year ending June 30, 1907, the Minnesota intrastate rev-
437 enue of the Minneapolis & St. Louis Company derived from the business covered by such rates would have been reduced $33,367.30, more than 19½% of the revenue derived from such business.

(Ex. 16—Scott and Ex. 21—Tittemore.)

Passenger Business.

On the volume of the passenger service rendered by the Minneapolis & St. Louis Company within the state of Minnesota for the year ending June 30, 1906—the last complete fiscal year during which the basis of maximum fare of three cents per mile was applied by said Company—the losses in revenue which would have resulted had the two cent per mile passenger law complained of been in effect, are as follows:

Intrastate passenger business in Minnesota	$80,452
Interstate passenger business in Minnesota	66,372
	$146,824

(See Ex. 13—Scott.)

The volume of passenger service rendered during the fiscal year 1907 was greater than the preceding fiscal year.

(Ex. 12—Scott, Ex. 33—Scott.)

Commodities—Chapter 232.

As hereinbefore stated, the Northern Pacific Company, the Great Northern Company and the Soo Company reduced rates in the autumn of 1906, in Minnesota, on coal and grain. By reason of these reductions the Minneapolis & St. Louis Company was compelled to make certain reductions on coal and grain on its line with respect to such business, intrastate, in Minnesota, and certain of its corresponding interstate business. Immediately prior to the commencement of these suits the Minneapolis & St. Louis Com-
438 pany, intending to obey the law and apply the rates prescribed in Chapter 232, prepared certain tariffs covering the commodities described in said Chapter 232, which tariffs with respect to intrastate business were as high as said Company could maintain under the act, and which interstate tariffs were as high as said Company could maintain and comply with the provisions of said act with respect to such intrastate business.

On the volume of business in the transportation of commodities covered by said act, of said Company, moved during the fiscal year ending June 30, 1906, the revenues of said Company—if the aforesaid tariffs required and made necessary by the provisions of said act, had been in force, would have been decreased below what the same would have been had the rates remained the same as they were in fact after the reductions in the autumn of 1906, made necessary by reason of the reductions in the northern lines hereinbefore referred to, as follows:

Minnesota intrastate..	$51,802.22,	more than 14% of revenue affected.
Minnesota interstate..	66,842.46,	more than 16% of revenue affected.
Other interstate.....	26,847.55,	more than 11% of business affected.
Making a total of...	$145,492.23,	more than 14% of business affected.

Comparing the revenue on the commodities described in said act, which would have been received on the business of the fiscal year ending June 30, 1906, under the rates prescribed in said act, with revenue which would have been received on the same business if the rates had remained the same throughout the year as they were prior to the reductions made as aforesaid in the autumn of that year, the resulting loss would have been as follows:

439

Minnesota intrastate..	$70,760.83,	more than 19% of revenue affected.
Minnesota interstate..	82,101.42,	more than 19% of revenue affected.
Other interstate.....	26,847.55,	more than 11% of revenue affected.
Total	$179,709.80,	more than 17% of revenue affected.

(See Ex. 14-A—Tittemore.)

Revenue Derived from Operation, Fiscal Year Ending June 30, 1907.

(Exhibit 33—Scott, Sec. D, Exhibit M—Hillman.)

	Intrastate.	Interstate.	Total.
Freight revenue (transportation).....	$534,696.66 31.18%	$1,180,155.91 68.82%	$1,714,852.57
Miscellaneous (consisting of switching, demurrage, storage, etc.).....	1,151.55	2,541,67	3,693.22
	$535,848.21	$1,182,697.58	
Passenger revenue.....	$352,008.52 54.13%	$298,258.28 45.87%	$650,266.80
Miscellaneous (consisting of mail, express, excess baggage, etc)..... ...	60,474.43	51,246.29	111,720.72
	$412,482.95	$349,504.57	$2,480,533.31

(Division of Miscellaneous between intra and inter is on gross revenue basis.)

440 Operating expenses in the state..... $1,554,595.49
(Exhibit 33—Scott.)

Divided between freight and passenger as follows:

Passenger	$523,375.97	
Freight	1,031,219.52	$1,554,595.49

(Exhibit 33—Scott, Sec. B and p. 1175 P. R. et seq.)

Dividing freight operating expenses—$1,031,219.52—on "straight revenue basis":

Assigns 31.18%=$321,534.25 to intrastate freight,
Assigns 68.82%=$709,685.27 to interstate freight.

Dividing passenger operating expenses, $523,375.97 in like manner,

Assigns 54.13%=$283,303.41 to intrastate passenger,
Assigns 45.87%=$240,072.56 to interstate passenger.

Taxes paid in Minnesota, fiscal year ending June 30, 1907, $124,474.58, (Ex. 33—Scott, Sec. B), apportioned to the various classes of business on revenue basis.

Assigns 22.61% thereof = $28,143.70 to intrastate freight,
Assigns 49.90% thereof = $62,112.81 to interstate freight,
Assigns 14.88% thereof = $18,521.77 to intrastate passenger,
Assigns 12.61% thereof = $15,696.24 to interstate passenger.

Adding operating expenses assigned to each such class of business to taxes assigned to each such class of business, and subtracting the sum from the foregoing gross earnings from operation of each such class of revenue, and we have the following results:

Intrastate freight, net operating revenue less operating expenses and taxes	$186,170.26
Interstate freight, net operating revenue less operating expenses and taxes	410,899.50
441 Intrastate passenger, net operating revenue less operating expenses and taxes	110,657.77
Interstate passenger, net operating revenue less operating expenses and taxes	93,735.77
Total net operating revenue	$801,463.30

less taxes (stated in Ex. 33—Scott earnings over expenses and taxes.)

In addition to the earnings aforesaid the Company received in Minnesota in said year from use of its property certain "other income," being net items aggregating $94,514.42, (Ex. 33—Scott, Sec. B), which distributed on the revenue basis,

Assigns 22.61% or $21,369.71 to intrastate freight,
Assigns 49.90% or $47,162.69 to interstate freight,
Assigns 14.88% or $14,063.74 to intrastate passenger,
Assigns 12.61% or $11,918.26 to interstate passenger.

Adding $21,369.71 (other income assigned to intrastate freight) to $186,170.26 (earnings over expenses and taxes) we have $207,539.97.

The commodity rates complained of were enjoined. Had the same been in effect intrastate freight revenue would have been decreased on that account at least $51,802.22. (See Ex. 14-A—Tittemore.)

The class rates complained of were applied November 15, 1906. Had the same been in effect during the whole of the fiscal year the revenue of the Company would have been decreased on that account 9/24 multiplied by $33,367.30=$12,512.74 (see Exhibit 15—Scott), making the total reduction of intrastate revenue on account of the rates complained of $51,802.22 plus $12,512.74=$64,314.96, which subtracted from $207,539.97 leaves $143,225.01, sufficient to pay an annual return of 2.93% upon $4,885,673.00, proportion of value assigned to intrastate freight.

442 The net earnings of the intrastate passenger business over expenses and taxes, $110,657.77 plus $14,063.74, the intrastate passenger proportion of other income=$124,721.51, the total net intrastate passenger income from all sources involving any use of the property valued.

The passenger rates complained of were first applied May 1, 1907. If the same had been in effect during the whole of such fiscal year the intrastate passenger revenue would have been decreased 5/6 of $80,452.00, or $67,043.34, which subtracted from $124,721.51, leaves $57,678.17, sufficient to yield only 1.79% on $3,215,339.00, value assigned to intrastate passenger business.

The total net intrastate income, freight and passenger, all sources, involving any use of the property,

Intrastate freight	$143,225.01
Intrastate passenger	57,678.17
Total	$200,903.18

divided by $4,885,673.00, intrastate freight value plus $3,215,339.00, intrastate passenger value, or $8,101,012.00=2.47% return divided from total intrastate business on total valuation of property assigned thereto.

Dividing the freight operating expenses and the passenger operating expenses of Minnesota between intrastate and interstate business, respectively, on the straight revenue basis, as aforesaid, does not assign to either class of such intrastate business the full amount of operating expenses which was actually expended in the conduct thereof; and consequently the rates of return on value 2.93% for intrastate freight and 1.79% for intrastate passenger, and 2.47% for total intrastate—freight and passenger—are in excess of the actual returns respectively which would have been earned if the rates complained of had been in effect during the whole of such fiscal year.

443 It appears from the foregoing facts, in these three cases and the Master finds that for the two years next prior to July 1, 1908, in these three cases the revenue derived by the said defendant railway companies and each of them from the property thereof devoted to the public use in the operation of their respective lines of railway and the conduct of their business as common carriers of passenger- and freight within and local to the State of Minnesota, were and that they still are inadequate and insufficient compensation for the property so used and the service rendered, and that the aforesaid rates prescribed by the Orders of the Railroad & Warehouse Commission and the Acts of the legislature were and still are unreasonably low, unjust and confiscatory, and, in the immediate future and until there shall be very material changes in existing conditions not likely soon to occur, they will continue so to be, and that the enforcement of said orders and acts should be enjoined and restrained, as well because they are unreasonably low and confiscatory as because they constitute a burden upon and an interference with and a regulation of interstate commerce, as has been hereinbefore found and determined.

XVIII.

Express Business.

The relation of the express companies, doing business over the Northern Pacific Company's and Great Northern Company's re-

spective lines of railway, to the said respective companies ought not to be passed over without mention. It appears that each railroad company owns all the stock of the express company operating on its line and that the express business is conducted under a contract between the express company and the railway company whereby the latter receives certain fixed compensation for the privileges granted to the express company, which compensation, of course, is included in the operating revenue of the railway company. But the
444 express company pays very substantial dividends on its capital stock which is received by the railway company but not included by it in such operating revenue, and there is considerable force in defendants' contention that such dividends should be considered as operating revenue. It must be remembered, however, that the business of an express company is in many respects of a very different character to that of a railway company, and its scope is much broader than that of an ordinary common carrier. The business of such express company is to assemble, insure, especially care for and speedily forward to and distribute at point of destination all articles of transportation committed to its charge, including the issuing of express money orders, making collections and other like kinds of service required in commercial affairs. Manifestly such services in general are widely different from those usually performed by a railway company, and suggests the propriety if not the necessity of a separate and independent agent for their performance. Since, however, by ownership of stock the railway company receives the net revenue of the express company, and does not include it as a revenue derived from the operation of its own business, as indeed it is not, it is important that the public who are directly interested in the operating revenue of the railway company, derived as it is from rates paid by them, should be protected against any unfair contract between the railway company and the express company controlled by it whereby the latter may not be accorded full value for services rendered, and the burden of establishing the fairness of such contract whenever called in question is upon the railway company. In the instant cases, however, the evidence does not justify a finding that the railway companies in question do not receive full and fair compensation for services rendered to the express companies, and they are, therefore, not required to include express dividends in their operating revenue.

445 **XIX.**

Conclusion.

The foregoing findings of fact and conclusions of law the Master deems sufficient to cover all the issues necessary for final judgment in these three cases. It is needless to say that they have been thoroughly and carefully tried and with marked ability on behalf of both parties, and nothing has been left undone to fully apprise the Court of every fact necessary to reach a just decision, and to this end counsel on both sides have given their undivided attention in the presentation of testimony and preparation of briefs, and in oral

argument, for a period of nearly two and a half years, time as the Master believes well spent in the ultimate determination of questions of great national as well as of great commercial importance.

In addition to the testimony reported to the Court, it has been agreed between the parties that reference might be made to the reports of the several companies annually made to the Railroad & Warehouse Commission without a transcription thereof and its inclusion with the other testimony herewith reported to the Court, and both parties have made recourse thereto in preparing exhibits in evidence and in submission of the causes for decision.

In obedience to the order of Court the Master submits forms of decree which he recommends to be entered in the three cases, and the same as hereto annexed and made part of this report.

All of which is respectfully submitted,

September 21, 1910.

CHAS. E. OTIS,
Special Master.

446 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
v.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Decree.

The above entitled cause was submitted to the Master on arguments of Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainant, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendants other than the Railway Companies.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the Bill of Complaint, operate as a burden upon and an interference
447 with, a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the Defendant the Northern Pacific Railway Company, and said Acts and Orders and each of them are confiscatory and constitute an attempt to deprive the Complainant

and the said Railway Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said Railway Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said Acts and Orders are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is void and of no effect so far as the said Northern Pacific Railway Company, its officers, directors, agents and employés are concerned, and that said Northern Pacific Railway Company, its officers, directors, agents and employés, be and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Orders of September 6, 1906 and May 3, 1907, and that they are, and
448 each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Orders of September 6, 1906 and May 3, 1907.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That said defendants E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph Michaud, and all other shippers of freight over the lines of said Railway Company, and all others making use of said lines of railway, be and they are, and each of them is, hereby permanently enjoined and restrained from instituting or causing to be instituted any action or proceeding for any violation of the said Acts or Orders, or any of them.

SECTION 5. That the Complainant recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 6. This decree shall take effect and be in force from and after the — day of ——.

449 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

v.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

v.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

(Consolidated.)

450 *Decree.*

The above entitled cause was submitted to the Master on arguments by Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainants, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendants other than the Railway Companies.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the Bill of Complaint, operate as a burden upon and an interference with a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the Defendant the Great Northern Railway Company, and said Acts and Orders and each of them are confiscatory and constitute an attempt to deprive the Complainants and the said Railway Company of their and its property without due process of law and to deny them and it the equal protection of the law, and to impose upon said Railway Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said

Acts and Orders are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is void and of no effect so far as the said Great Northern Railway Company, its officers, directors, agents and employés are concerned, and that said Great Northern Railway Company, its officers, directors, agents and employés, be and they are, and
451 each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Orders of Sepember 6, 1906, and May 3, 1907, and that they are, and each of them is further permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Orders of September 6, 1906, and May 3, 1907.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That said defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and all other shippers of freight over the lines of said Railway Company, and all others making use of said lines of railway, be and they are, and each
452 of them is, hereby permanently enjoined and restrained from instituting or causing to be instituted any action or proceeding for any violation of the said Acts or Orders, or any of them.

SECTION 5. That the Complainants recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 6. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

453 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

WILLIAM SHILLABER, Complainant,

v.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Decree.

The above entitled cause was submitted to the Master on arguments by Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainant, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendant other than the Railroad Company.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Order of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, recited in the Bill of Complaint, operate as a burden upon and an interference with, a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and

454 upon the lines of railway of the Defendant the Minneapolis & St. Louis Railroad Company, and said Acts and Order and each of them are confiscatory and constitute an attempt to deprive the Complainant and the said Railroad Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said Railroad Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law, and therefore said Acts and Order are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is, void and of no effect so far as the said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés are concerned, and that said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés, be and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Order of September 6, 1906, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railroad Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Order of September 6, 1906, and that they are, and each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railroad Company, or any of
455 & 456 its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Order of September 6, 1906.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railroad Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That the Complainant recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 5. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

457 In the United States Circuit Court, District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al., Defendants.

Exceptions by Complainant to Report of Honorable Charles E. Otis, Special Master.

The Complainant makes the following exceptions to the Report of the Special Master, dated September 21, 1910:

I.

He excepts to that finding and conclusion of the Master appearing upon page 17 (Print. p. 16), being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainant that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906,
458 and May 3, 1907, fixing merchandise or class rates within the State. The Master erred in holding, as a matter of law, that

the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake work of securing a readjustment of the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S. 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

He excepts to that finding and conclusion of the Master appearing upon page 19 (Print. p. 18), being Subdivision IV, entitled "Effect of prescribed rates, if confiscatory as to one line of railway and not another," wherein the Master overruled the contention of the complainant that both the acts of the Legislature and the orders of the Railroad and Warehouse Commission, being by their express terms of general application to all railroads doing business in the State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are general in their terms and expressly apply to all railroads operating in the State of Minnesota and contain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and of each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in finding, in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S. 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S., 514, Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, these acts and orders if invalid as to one company—as upon the proof they are—are thereby, as a matter of

law, because of general application and inseparable in their terms, unconstitutional and void as to all other companies in the State.

III.

He excepts to that finding and conclusion of the Master appearing on page 67 of the Report (Print. p. 60 in Subdivision VII of said Report), entitled "Real estate valuations as of June 30, 1908," fixing the total value of lands of the Northern Pacific Railway Company in the State of Minnesota as follows:

Terminal properties, St. Paul appraisement of Read, Watson and Taylor, as modified by railroad company	$7,645,100.24
Add 5 per cent for cost of acquisition and consequential damages	382,255.01
Property acquired after appraisement	328,725.69
Minneapolis, appraisement of Elwood, Barney, and Ridgeway, as modified by railway company	4,027,616.17
Add 5 per cent for acquisition and consequential damages	201,380.80
Property acquired after appraisement	227,737.26
Duluth, appraisement of Stryker, Mendenhall and Little	3,602,443.43
Add 25 per cent for railway value, cost of acquisition and consequential damages	900,610.85
Total value of terminals	17,315,869.45
Lands outside of terminals	3,708,693.45
Grand Total	21,024,562.90

The evidence contained in the testimony of the witness Thomas Cooper (Record pp. 122, 420, 1059 and 3040) together with the exhibits offered by said witness, and the evidence of the witnesses John D. Stryker (Record p. 454, Comp. Ex. 21—Stryker), L. B. Elwood (Record p. 480, 1024, Comp. Ex. 22—Elwood), John J. Watson (Record p. 508, Comp. Ex. 23—Watson), Fred E. Barney (Record p. 1092), William C. Read (Record p. 1116), Oscar L. Taylor (Record p. 1420), Howard Elliott (Record p. 1217), together with the evidence of Charles Hayden (Great Northern record, pp. 162 to 358 inclusive) and of the said witnesses Taylor, Elwood, Stryker, Read, Watson and Barney contained in the Great Northern Record, the evidence of James J. Hill and John F. Stevens, each and
461 all establish, without competent proof to the contrary, that the fair present value as of April 30, 1908, of the right of way and terminal lands of the Northern Pacific Railway Company in the State of Minnesota is not less than the following sums:

St. Paul Terminals	$9,907,889.34
Minneapolis Terminals	5,292,819.22
Duluth Terminals	5,155,203.75
Right of Way and Station Grounds outside of above terminals	4,944,924.60
Total	25,300,836.91

(See Comp. Ex. 9—Cooper, Revised.)

The Master erred in reducing the values of said lands and terminals as above shown below said sum of $25,300,836.91, for the reason that having rejected the testimony offered by the defendants relating to the subject of land values of said Railway Company, the undisputed proof justified and required a finding of said sum of $25,300,836.91, and there was in the case no relevant or competent proof to the contrary. The evidence shows, without contradiction, that these lands are each and all devoted to railroad use, and the rule of law requires that they be valued according to the highest, reasonable use for which they are adapted; and the evidence offered by the Complainant above referred to proves that the values placed upon them by Complainant, and the proof offered by him in that respect, are just and reasonable, having reference to such railroad use.

The Master erred, without testimony or evidence, in arbitrarily adding but five per cent to the appraisement of the terminals in St. Paul and Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof of the witness Thomas Cooper (Record pp. 211, etc.) shows that in considering the fair value of the right of way and terminal lands of the
462 Northern Pacific Railway Company, five per cent added to such appraisement is unjustly and unreasonably low, and that to fairly state the value of said lands for railroad purposes separate consideration of the different parcels of said land was necessary, and a varying range of percentages, according to location and the particular circumstances surrounding each parcel should have been used, ranging from 5 to 40 per cent, as testified to and fully explained by said witness Cooper. The arbitrary addition of but 5 per cent to all of said lands was without any support whatsoever in the evidence, and the Master erred in limiting the percentage addition to the appraised value of said lands to 5 per cent as aforesaid and in not accepting the amounts placed upon said lands as testified to by the witness Cooper after the revision of the exhibits offered by him. (See record, pp. 1059 to 1066 inclusive, Comp. Ex. 29—Cooper and Comp. Ex. 30—Cooper.) The evidence of the witness Cooper, supported by the testimony of the witnesses and by the exhibits hereinbefore referred to, fairly shows the value of said lands, based upon their availability for railroad use, and the Master erred in reducing said figures below that testified to by said witness and shown by evidence contained in said exhibits. For like reason, the Master erred in adding an arbitrary addition of but 25 per cent to the appraisement of the lands of the Northern Pacific Company in

the City of Duluth, and in refusing to accept the figures placed thereon by the witnesses above referred to.

IV.

He excepts to that finding and conclusion of the Master on p. 69 of the Report (Print. p. 62) wherein the Master finds as follows:

"He is of opinion that the reductions made from such valuations by the Northern Pacific Company as to its properties in St.
463 Paul and Minneapolis were clearly justified by conditions differentiating the properties upon which such reductions were made from other properties valued by the appraisers and which were not fully appreciated by them. They were much farther removed from the business centers of the cities and partook more of the nature of suburban property."

The witness Cooper (Record, pp. 1059 to 1066 inclusive) testified that the reductions made by him in the first place from the valuations put upon the terminal lands in St. Paul and Minneapolis of the Northern Pacific Company by the real estate appraisers were not justified and were made through misapprehension of the elements entering into the fair value of said lands; that upon further consideration, supported by the examination and current sales of contiguous properties, he was convinced that the figures placed upon said lands by the real estate appraisers aforesaid were fair and reasonably low and should not have been by him reduced. The record contains no evidence to the contrary, and the Master erred in not accepting said testimony and the values as originally fixed by the real estate appraisers.

V.

He excepts to that finding and conclusion of the Master found on page 68 (Print. p. 61), under Subdivision VII of said Report, wherein the Master without warrant in the evidence, reduced the value of the lands of said company outside of the three terminals aforesaid, from $4,944,924.60 to $3,708,693.45 or a difference of $1,236,-231.15. The Master, without evidence, arbitrarily reduced the value placed upon said outside right of way lands and station grounds by the witnesses offered by the Complainant to an amount equal to 75 per cent thereof, whereas the proof, without contradiction, establishes that the said value of $4,944,924.60 was the minimum value
464 which, upon evidence, should have been placed upon said outside lands. (Evidence of Thomas Cooper, and Exs. 9, 10, 75, 76 and 77—Cooper.)

VI.

He excepts to that finding and conclusion of the Master found on p. 70 (Print. p. 63), under Subdivision VII aforesaid, wherein the Master found and declared that the appraisement made by the real estate experts of the St. Paul, Minneapolis and Duluth terminals as reduced by the witness Thomas Cooper, in the first instance, and with an addition of only 5 per cent as to St. Paul and Minneapolis and

only 25 per cent as to Duluth to cover the cost of acquisition and consequential damages, should be accepted as full railroad value of said terminal properties, for the reason that the clear and undisputed weight of the evidence shows that the modification of the values placed upon said terminal lands of the Northern Pacific Railway Company by said real estate experts was not warranted, and for the further reason that the proof establishes that the addition of the various percentages according to location and condition, ranging from 5 to 40 per cent as made by the witness Cooper to the appraisement of said real estate experts, was the minimum that should have been added to determine the value of said lands, based upon railroad use, and for the further reason that under the law properly applicable thereto, the Complainant is entitled to have said terminal lands valued as an entirety according to their fair present value for railroad uses and purposes, measured by their availability for such purposes, and, when so valued, the appraisement placed thereon by Complainant's proof hereinbefore specifically referred to is the minimum value that can fairly be placed thereon.

465 VII.

He excepts to that finding and conclusion of the Master found on p. 77 (Print. p. 69) as follows:

Item 4, Tunnels (Northern Pacific case), amount allowed $253,250.

The Master erred in reducing the amount claimed in that regard by the Complainant, which is $358,363, and in disallowing anything for the Seventh Street Viaduct, so-called, in the City of St. Paul, for the reason that there is no substantial difference between this structure and overhead bridges and like structures which the company will be compelled to reconstruct and maintain and which will probably require repairs, renewals and replacements. The Master erred in assuming that this structure will not require repairs or replacements, and inasmuch as the evidence shows, without dispute, that the City of St. Paul filled Seventh Street to a level above that of the railroad track, creating a permanent condition which will at all times require the maintenance of a tunnel through which the railway lines may pass, the amount claimed on that account should have been allowed, and the Master erred in arbitrarily disallowing it.

VIII.

He excepts to that finding and conclusion of the Master found on p. 79 (Print. p. 70) as follows:

Item 6, Ballast, Northern Pacific case, amount allowed $1,960,969.

The Complainant established by the undisputed proof that the ballast in the Northern Pacific lines in the State of Minnesota would reasonably cost, to presently reproduce, the sum of $2,084,258.49.

466 The Master erred in reducing this amount by applying a price of but 62 cents per cubic yard to the yardage involved instead of accepting the figure of 66 cents per cubic yard, as fully testified to and supported by the evidence offered by the Com-

plainant, Comp. Ex. 83—Darling, showing actual cost of ballasting done by the Northern Pacific during the years 1906 to 1908, shows a much higher price than 66 cents per cubic yard, and the Master arbitrarily disregarded and ignored controlling evidence in reducing such figure to 62 cents without competent proof authorizing or justifying that to be done.

IX.

He excepts to that finding and conclusion of the Master found on p. 83 (Print. p. 74) as follows:

Item 11, Bridges, Trestles and Culverts, Northern Pacific Case, amount allowed, $3,586.053.

The Complainant established by competent proof, undisputed, that there should have been allowed for this item $3,884,745.72. The testimony of the witness Darling, and Comp. Ex. 86—Darling, establishes that the unit prices used by the witness Darling are lower than any of said bridges could have been constructed for on April 30, 1908. The Master erred in reducing said figures in any amount whatsoever, and erred in accepting the mere opinion of the State's engineer, when it appears by his own testimony that he had had no experience in the matter of the construction of bridges qualifying him to express an opinion entitled to any weight as against actual current costs of bridges as shown by said Ex. 86—Darling. The actual average prices per unit shown in Comp. Ex. 86—Darling establish tthe figures claimed by Complainant beyond dispute, and the Master erred in arbitrarily and without justification of any sort in the evidence, allowing but two-thirds of the difference between the figures of the State and of the Complainant.

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X.

He excepts to that finding and conclusion of the Master found on p. 87 of the Report (Print, p. 77) as follows:

Item 37, Contingencies, Northern Pacific case, amount allowed, $3,710,479.

The amount claimed by Complainant is $6,985,585.80, being ten per cent of all items embraced in the schedule, showing the cost of reproduction to April 30, 1908, and the testimony offered by the witnesses Darling, Elliott, Berry, Hill, Stevens and Hogeland clearly supports this claim.

The Master erred in allowing but five per cent on items 1 to 34 of the schedules shown on pp. 91 and 92 of the Report (Print. pp. 81 and 82) for the reason that the great weight of the testimony shows that the allowance is wholly insufficient, and the evidence offered by the witness Morgan for the State on that subject shows that he was without any sufficient knowledge or experience to justify the expression of an opinion, and the proof offered by the Complainant required a finding of ten per cent to cover said item.

XI.

He excepts to that finding and conclusion of the Master found on p. 88 of the Report (Print. p. 78) as follows:

Item 39, Interest during Construction, Northern Pacific Case, amount allowed at $7,386,215.

The Complainant established by competent proof that this item should have been allowed at $7,768,868.17. The Master disallowed any item of interest on contingencies and erred in that regard, for the reason that if it is proper to allow contingencies, it is also proper to allow interest on that amount. The amount allowed for Contingencies is because that sum is necessary and will be ex-
468 pended, money to meet contingencies must be furnished, and, therefore, interest thereon should have been allowed. Because of the erroneous and arbitrary reductions in various of the items in the schedule 1 to 36 inclusive shown on pp. 91 and 92 of the Report (Print. pp. 81 and 82) the amount of interest computed and allowed by the Master is also unreasonably and unjustly low; and the Master erred not only in reducing the various items in said schedule, as hereinbefore complained of, but also in refusing to allow any percentage for interest on account of the sum claimed by the Complainant for contingencies.

The Master erred in allowing the rate of interest at 4% only, or at any rate less than 6%, for the reason that under the testimony of the witnesses Elliott and Berry in the Northern Pacific Case, and Hogeland and Hill in the Great Northern Case, it was established that 6% is a just and reasonable rate of interest. The Master reduced the rate of interest to 4% without any proof in the record to support his statement that it would be a fair rate at which money could be procured for construction purposes.

The Master erred in reducing the rate from 6% to 4% by reference to Complainant's Exhibit No. 2 in the Northern Pacific Case, for the reason that all of the evidence of the witnesses aforesaid shows that 4% is unreasonably low, and less than money could be procured for during the period of construction. In reducing the rate of interest from 6% to 4% the Master in effect found that during the period necessary for the construction of the lines of the Northern Pacific Company in the State of Minnesota, the money necessary for that purpose could be borrowed at par with 4% interest, whereas the proof established by the testimony of the witnesses aforesaid is to the effect that such money could not be borrowed in any event at less than 6% interest, and it follows, therefore, that an allow-
469 ance of interest at the rate of 6% should have been made, and the Master erred in reducing such rate arbitrarily to 4%.

Testimony of Hogeland page 52, Hill page 1269.

XII.

He except for each and every of the reasons hereinbefore set forth to the action of the Master in reducing the amount shown in the testimony and exhibits offered by the Complainant comprising the cost of reproducing the Northern Pacific lines in the State of Minnesota as of April 30, 1908, of $101,158,583.13 to $90,204,545 as shown in the schedule contained in the Master's Report on pp. 91 and 92 (Print. pp. 81 and 82).

XIII.

He excepts to that finding and conclusion of the Master found on p. 97 thereof (Print. p. 86) wherein in considering the subject of depreciation the Master used the following language:

"There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies. No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making."

The Master erred in including the working capital, so-called, as an offset to the depreciation for the reason that the undisputed testimony by the witnesses Hill, Elliott, Stevens, Berry, Hogeland and Darling in the Great Northern and Northern Pacific cases established beyond controversy that the appreciation of roadbed, embankments,
slopes, etc., more than outweighs the minor elements of
470 depreciation which are not fully compensated for from time
to time by maintenance and repairs, and the master should have found that such depreciation as may exist was more than compensated for by the elements of value arising from appreciation in value as aforesaid, and erred in including working capital as an additional offset to such minor depreciation. Working capital should have been added independently to the present cost of reproduction of the physical property and included as an element making up the present value of the properties in this State, and not less than Minnesota's mileage proportion of the sum of $15,000,000 should have been included. (Testimony Howard Elliott, Record p. 1245.)

XIV.

He excepts to those findings and conclusions of the Master appearing on pp. 100 to 102 inclusive (Print. pp. 89 to 90 inclusive) wherein the Master, after ascertaining from the proof offered from the books of the Northern Pacific Railway Company and its predecessors that the investment cost of the system was the sum of $369,252,755, finds that this amount should be reduced by the several items stated in said finding, aggregating $57,009,200, leaving a balance of only $312,243,555, for the reason that the Master erred in disallowing each and every such item. This exception is intended to be tantamount to a separate exception with regard to the disallowance of each such item.

XV.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) of the Report, wherein the Master erroneously held that good-will and corporate franchises are not proper elements of value.

471 XVI.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) wherein the Master erroneously held that patronage and good-will of the public are not elements of value to be considered.

XVII.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) wherein, after finding and recognizing as matters of value the existence in these properties of knowledge derived from experience, adaptation to the needs of the public and readiness to serve, the same were only taken into account as an offset to depreciation arising from use and weather-stress and were not assigned any values in addition thereto. Such depreciation as exists in said properties over and above maintenance and repair is shown by undisputed testimony to be more than offset by appreciation of roadbed, and the Master erred in including as an offset to depreciation the aforesaid elements of value comprehended within the term "going concern," and in not assigning thereto a fair and reasonable sum representing the added value in said properties over and above the bare value of the physical items comprehended in said property. The Master found in subdivisions numbered 11 and 12, pp. 107 to 110 inclusive (Print. pp. 94 to 97 inclusive), that the lines of the Northern Pacific Railway are efficiently, economically and honestly managed and located and constructed pursuant to public demand, and further found that the location, connections, character of traffic and prospects of the future growth in business, said properties contain large elements of so-called intangible values over and above the mere cost of reproduction of the physical items comprising said properties, and having so found, erred in failing to assign thereto a fair and reasonable amount covering said values over and above the cost of reproduction.

472 XVIII.

He excepts to that finding and conclusion of the Master found on p. 110 of the Report (Print. p. 97), under Subdivision XIII of said Report, wherein, after finding from the testimony and proof in this case that the cost of reproduction of the entire Northern Pacific system, after certain deductions as stated in said report, is the sum of $486,738,161, erroneously assumed to reduce that amount by an arbitrary percentage reduction of seven per cent, placing the valuation of said system at $452,666,489. The Master erred in thus reducing the value of the Northern Pacific system for the reason that there was no testimony justifying said reduction as to the properties of said Company aforesaid, outside of the State of Minnesota, and as hereinbefore shown the reductions made by the Master in the values of property within the State of Minnesota were erroneous and unjust. As to the property outside of the State of Minnesota, the Master arbitrarily and without any support in the testimony reduced the value of said system seven per cent, or a total of $34,071,672.

XIX.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, State and Interstate," beginning upon p. 112 (Print. p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," beginning on p. 127 (Print. p. 112) of the Report of the Master, the value of the property of the Northern Pacific Railway Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and, when so divided, the results have been applied by the Master to ascertain, by the computations in said Report employed, to determine the net
473 return from the intrastate passenger and freight business of said Company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainant excepts to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and excepts, for the same reasons, to the proportionate valuations based upon said total valuation as separated and segregated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainant. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainant excepts to each and every determination and conclusion reported by said Master in any manner derived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

XX.

He excepts to that finding and conclusion of the Master found at p. 122 of the Report (Print. p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found." For the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found—or upon the full value of the property as claimed by
474 Complainant—will not be sufficient to yield to Complainant and said Company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

XXI.

He excepts to the Master's finding and determination found at p. 133 of the Report (Print. p. 117) as follows:

"The Master finds from the weight of testimony that the cost per ton mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one."

For the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master, fixing the cost of doing intrastate freight business lower than is warranted by any evidence in the case.

And he excepts to the failure of the Master to find that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is the cost of doing the interstate freight business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence. (Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Gt. N. Record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Gt. N. Record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Gt. N. Record, p. 305, etc.; James N. Tittemore, M. & St. L. Record, p. 780, etc.)

XXII.

He excepts to that finding and conclusion of the Master found on p. 133 (Print. p. 117) as follows:

"He also finds from the evidence that the cost per passenger-
475 mile in the State passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota,"

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master in fixing the cost of doing intrastate passenger business lower than is warranted by any evidence in the case. And he excepts to the failure of the Master to find that the cost per passenger mile of doing intrastate passenger business in Minnesota is at least twenty-five per cent greater than the cost of doing interstate passenger business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence.

(Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Gt. N. Record, p. 1078, 1133, Ex. 53.—Ward; William B. Doddridge, Gt. N. Record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Gt. N. Record, p. 305, etc.; James N. Tittemore, M. & St. L. Record, p. 780, etc.)

XXIII.

He excepts to each and every finding, determination and conclusion of the Master to be found in Subdivision XVII commencing at p. 127 of said Report (Print. p. 112), entitled "Net return from intrastate passenger and freight business on property valuations

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RESULTS IN NORTHERN PACIFIC CASE.

Using Earnings, Operating Expenses, Miscellaneous Income and Taxes shown in Complainant's Exhibits 79, 80 and 80-B Elliott. Division of Operating Expenses between Intrastate and Interstate as per bases shown in body of statement.
Year Ending June 30, 1908.

STATE OF MINNESOTA.

	Intrastate		Interstate		Total	
Freight Revenue	$1,555,342.92	= 16.356%	$7,953,734.41	= 83.644%	$9,509,077.33	= 100%
Miscellaneous Freight Earnings divided on basis of revenue	51,428.34	= 16.356%	263,002.68	= 83.644%	314,431.02	= 100%
	$1,606,771.26	= 16.356%	$8,216,737.09	= 83.644%	$9,823,508.35	= 100%
Passenger Revenue	$1,015,150.34	= 34.344%	$1,940,718.17	= 65.656%	$2,955,868.51	= 100%
Miscellaneous Passenger Earnings divided on basis of revenue	191,182.75	= 34.344%	365,487.26	= 65.656%	556,670.01	= 100%
	$1,206,333.09	= 34.344%	$2,306,205.43	= 65.656%	$3,512,538.52	= 100%

Operating Expenses:	Freight	Passenger	Total
Transportation Expenses	$3,118,371.89	$1,089,268.66	$4,207,640.55
Maintenance of Way and Structures	799,320.09	650,372.91	1,449,693.00
Maintenance of equipment	1,257,377.42	410,636.52	1,668,013.94
Traffic expenses	69,804.67	89,524.61	159,329.28
General expenses	98,844.18	71,829.25	170,673.43
Total	$5,343,718.25	$2,311,631.95	$7,655,350.20

Basis for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 3 Interstate ton miles.

Equated Ton Mile Basis

	Actual		Equated	Proportion	Operating Exps.
Intrastate ton miles	130,580,988 × 3.0	=	391,742,964	= 28.965%	$1,547,807.99
Interstate ton miles	960,709,494 × 1.0	=	960,709,494	= 71.035%	3,795,910.26
	1,091,290,482		1,352,452,458	= 100.%	$5,343,718.25

Equated Revenue Basis

	Actual Revenue		Equated Revenue	
Intrastate ton miles	$1,555,342.92 × 2.0852	=	$3,243,201.06	= 28.965%
Interstate ton miles	7,953,734.41 × 1.	=	7,953,734.41	= 71.035%
	$9,509,077.33		$11,196,935.47	= 100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 125 Interstate passenger miles.

Equated Passenger Mile Basis

	Actual		Equated	Proportion	Operating Exps.
Intrastate passenger miles	52,317,140 × 1.25	=	65,396,425	= 39.318%	$908,887.45
Interstate passenger miles	100,931,180 × 1.00	=	100,931,180	= 60.682%	1,402,744.50
	153,248,320		166,327,605	= 100.%	$2,311,631.95

Equated Revenue Basis

	Actual Revenue		Equated Revenue	
Intrastate passenger miles	$1,015,150.34 × 1.2387	=	$1,257,459.50	= 39.318%
Interstate passenger miles	1,940,718.17 × 1.	=	1,940,718.17	= 60.682%
	$2,955,868.51		$3,198,177.67	100.%

Divided on basis of earnings { Freight	$9,823,508.35	= 73.661%
Passenger	3,512,538.52	= 26.339%
Total	$13,336,046.87	= 100.%

		Total	Freight	Passenger
Rentals received less rental paid	73.661% of	$241,023.53	= $190,926.84	$50,269.81 = 26.339%
Hire of equipment	73.661% of	18,173.10		
Taxes	73.661% of	596,118.51	= 439,106.85	157,011.66 = 26.339%

Summary of Results (Valuation divided on basis of Earnings)

	Intrastate		Interstate		Total	
Freight Business:						
Earnings	$1,606,771.26	= 16.356%	$8,216,737.09	= 83.644%	$9,823,508.35	= 100%
Rentals and hire of equipment	31,227.99	= 16.356%	159,698.85	= 83.644%	190,926.84	= 100%
	$1,637,999.25	= 16.356%	$8,376,435.94	= 83.644%	$10,014,435.19	= 100%
Operating expenses	$1,547,807.99		$3,795,910.26		$5,343,718.25	
Taxes	71,820.32	= 16.356%	367,286.53	= 83.644%	439,106.85	= 100%
	$1,619,628.31		$4,163,196.79		$5,782,825.10	
Income applicable to valuation	$18,370.94		$4,213,239.15		$4,231,610.09	
Valuation 73.661% of $90,204,545.00	10,867,837.00	= 16.356%	55,577,733.00	= 83.644%	66,445,570.00	= 100%
Annual return	0.169%		7.581%		6.369%	
Passenger Business:						
Earnings	$1,206,333.09	= 34.344%	$2,306,205.43	= 65.656%	$3,512,538.52	= 100%
Outside operations	30,133.34	= 34.344%	57,606.41	= 65.656%	87,739.75	= 100%
Rental and hire of equipment	23,446.58	= 34.344%	44,823.23	= 65.656%	68,269.81	= 100%
	$1,259,913.01	= 34.344%	$2,408,635.07	= 65.656%	$3,668,548.08	= 100%
Operating expenses	$908,887.45		$1,402,744.50		$2,311,631.95	
Taxes	53,924.08	= 34.344%	103,087.58	= 65.656%	157,011.66	= 100%
	$962,811.53		$1,505,832.08		$2,468,643.61	
Income applicable to valuation	$297,101.48		$902,802.99		$1,199,904.47	
Valuation 26.339% of $90,204,545.00	8,159,782.00	= 34.344%	15,599,193.00	= 65.656%	23,758,975.00	
Annual return	3.641%		5.787%		5.050%	
Total Business:						
Income applicable to valuation	$315,472.42		$5,116,042.14		$5,431,514.56	
Valuation	19,027,619.00		71,176,926.00		90,204,545.00	
Annual return	1.658%		7.193%		6.021%	

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $21,493.67, nor any similar losses that would have accrued on Interstate commodity business (601)

assigned to each respectively," dependent upon or derived from the finding hereinbefore excepted to at No. XXI, to the effect that the cost per ton mile of doing intrastate freight business in Minnesota is at least two and one-half times as much as is such cost of doing the interstate freight business in Minnesota—or the finding last above at No. XXII hereof excepted to, to the effect that the cost per passenger per mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger
476 business in Minnesota, for the reasons stated in such exceptions, respectively. It is the intention that this exception shall be tantamount to exceptions stated separately to each and every determination and conclusion of the Master based upon either of the findings so as aforesaid excepted to, and excepts to the failure and refusal of the Master to find and determine facts which would be derived and follow from findings in substance as follows, viz: (1), that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is such cost in doing the interstate freight business in Minnesota, and (2), that the cost per passenger per mile in the state passenger business in Minnesota is at least twenty-five per cent greater than such cost in the intrastate passenger business in Minnesota.

On the valuation found by the Master and apportioned between the freight and passenger business—and intrastate and interstate of each—on the basis employed by the Master in his Report, and on the assumption that all of the other facts found by the Master are true (except the factors of extra cost), if the last mentioned factors of extra cost of the intrastate freight business and intrastate passenger business respectively be used in the same manner as were the extra cost factors used by the Master in his Report, results will be produced substantially as indicated in the following table, to wit:

(Here follows table, marked p. 476½.)

477 XXIV.

He excepts to the action of the Master in including in the item "Income applicable to Valuation" appearing on the table following p. 143 of the Report (Print. p. 127), and elsewhere in said Report, any portion of the revenue derived from "net rentals received," "hire of equipment received" and "outside operations," and the failure of the Master to assign any portion of the total value of the property in the State to the items so claimed by Complainant to have been erroneously included, for the reason that the items so erroneously included were "net items" and that if the value of said property be apportioned or assigned on the gross revenue basis directly to intrastate freight, interstate freight, miscellaneous freight, intrastate passenger, interstate passenger, miscellaneous passenger, "outside operations" (taking "gross" instead of "net") "rentals received and hire of equipment," the rate of return on property used in the intrastate freight business would be substantially less than that stated in the Report, and in like manner, the rate of return on the intrastate passenger business would be substantially less than as found by the Master. For the reason aforesaid, the Master erred in stating the computations, tables and results of the business of said Company, freight and passenger, under the rates in question in the State of Minnesota as they appear in said Report, and erred in failing to state the proper division of the property as aforesaid to the various classes of revenue.

Wherefore the Complainant prays that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

Dated October 20, 1910.

478 Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

479 In the United States Circuit Court, District of Minnesota
(Third Division.)

EMMA B. KENNEDY et al., Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

Consolidated.

Exceptions by Complainants to Report of Honorable Charles E. Otis, Special Master.

The Complainants make the following exceptions to the Report of the Special Master, dated September 21, 1910:

480 I.

They except to that finding and conclusion of the Master appearing upon page 17 (Print, p. 16), being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainants that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906, and May 3, 1907, fixing merchandise or class rates within the State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake the work of securing a readjustment of the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class-rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S., 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

They except to that finding and conclusion of the Master appearing upon page 19 (Print, p. 18), being Subdivision IV, en-
481 titled "Effect of prescribed rates, if confiscatory as to one line of railway and not another," wherein the Master over-

ruled the contention of the Complainants that both the acts of the Legislature and the orders of the Railroad & Warehouse Commission, being by their express terms of general application to all railroads doing business in the State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are general in their terms and expressly apply to all railroads operating in the State of Minnesota, and contain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S., 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S. 514, Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, these acts and orders, if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable, in their terms, unconstitutional and void as to all other companies in the State.

III.

They except to that finding and conclusion of the Master appearing on page 68 (Print, p. 61) of the Report, under sub-
482 division VII, entitled "Real Estate Valuations as of June 30, 1908," fixing the total value of lands of the Great Northern Railway Company in the State of Minnesota as follows:

St. Paul, appraisement of Read, Watson and Taylor.	$6,433,348.00
Add 5 per cent for cost of acquisition and consequential damages	321,667.40
Minneapolis, appraisement of Elwood, Barney and Ridgeway	11,619,765.00
Add 5 per cent for cost of acquisition and consequential damages	580,968.15
Duluth, appraisement of Stryker, Mendenhall and Little	713,280.00
Add 25 per cent for railroad value, cost of acquisition and consequential damages	178,320.00
Total value of terminals	19,847,366.56
Land outside of terminals	5,325,284.25
Grand total	25,172,650.80

The testimony contained in the testimony of the witnesses Charles Hayden (Record, pp. 162 to 358 inclusive, Complainant's Ex. 9—Hayden, Complainant's Ex. 10—Hayden), Oscar L. Taylor (Record, p. 359, Complainant's Ex. 11—Taylor), Lester B. Elwood (Record, p. 554, Complainant's Ex. 15—Elwood), John D. Stryker (Record, p. 592, Complainant's Ex. 17—Stryker), William C. Read (Record, p. 602), John J. Watson (Record p. 617), James J. Hill (Record, p. 1232), John F. Stevens (Record, p. 408), Thomas Cooper (N. P. Record, pp. 122, 420, 1059 and 3040), Howard Elliott (N. P. Record, p. 1217), together with the exhibits offered in the Northern Pacific case by the witness Cooper aforesaid, and the evidence in the Northern Pacific case of said witnesses Stryker, Elwood, Watson, Read, Fred. E. Barney (N. P. Record, p. 1092), and Oscar L.
483 Taylor (N. P. Record, p. 1420), each and all establish, without proof to the contrary, that the fair present value as of June 30, 1908, of the right way and terminal lands of the Great Norther Railway Company in the State of Minnesota is not less than the following sums:

St. Paul terminals	$8,041,686.00
Minneapolis treminals	14,524,704.00
Duluth terminals	969,152.00
Right of way and station grounds outside of above terminals	7,100,379.00
Total	$30,635,921.00

(See Comp. Ex. 9—Hayden).

The Master erred in reducing the values of said lands and terminals as above shown, below the said sum of $30,635,921 for the reason that having rejected the testimony offered by the defendants relating to the subject of land values of said Railway Company, the undisputed proof justified and required a finding of said sum of $30,635,921, and there was in the case no relevant or competent proof to the contrary. The evidence shows without contradiction that these lands are each and all devoted to railroad use, and the rule of law requires that they be valued according to the highest reasonable use for which they are adapted, and the evidence offered by the Complainants above referred to proves that the values placed upon them by Complainants, and the proof offered by them in that respect, are just and reasonable reference to such railroad use. The Master erred, without testimony or evidence, in arbitrarily adding but five per cent to the appraisement of the terminals in St. Paul and Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof of the witness Charles Hayden (Record, pp. 177, etc.) shows that 25 per cent added thereto was just and proper to make up the fair present value of said lands, in view of their adaptability for railroad purposes, and erred in fail-
484 ing to find 25 per cent of such appraisement in addition thereto for cost of acquisition and consequential damages instead of five per cent.

IV.

They except to that finding and conclusion of the Master on page 68 of the Report (Print, p. 61) under Subdivision VII as aforesaid, wherein the Master finds the value of the terminals of the Great Northern Railway Company in Duluth as follows:

Appraisement	$713,280.00
Add 25 per cent for railroad value cost of acquisition and consequential damages	178,320.00
Total	$891,600.00

for the reason that the Master erred in failing to add to the appraisement of the dock property of said company at Duluth by Messrs. Stryker, Mendenhall and Little the sum of $25,000 and in reducing the valuation of the Rice's Point property and the Michigan Street property below that fixed by the witness Hayden in his testimony aforesaid, whereby the Master erroneously and without warrant in the evidence reduced the valuation of said lands in the City of Duluth $77,552. (Record, p. 172.)

V.

They except to that finding and conclusion of the Master found on page 68 (Print, p. 61) under said Subdivision VII as aforesaid, wherein the Master, without warrant in the evidence, reduced the value of the lands of said company outside of the three terminals aforesaid from $7,100,379 to $5,325,284.25, or a difference of $1,775,094.75. The Master without evidence reduced the value placed upon said outside right-of-way lands and station grounds by
485 the witnesses offered by the Complainants, to 75 per cent thereof, whereas the proof, without contradiction, establishes that the said value of $7,100,379 was the minimum value, which upon the evidence should have been placed upon said outside lands. (Testimony of Hayden, p. 162 et seq.)

VI.

They except to that finding and conclusion of the Master found upon page 70 (Print, p. 63) under Subdivision VII aforesaid, wherein the Master found and declared that the appraisement made by the real estate experts of the St. Paul and Minneapolis terminals with an addition of five per cent to cover cost of acquisition and consequential damages, should be accepted as full railroad value of said terminal properties, for the reason that the proof establishes that an addition of 25 per cent to the appraisement of said real estate experts was the minimum that should have been added to determine the value of said lands based upon railroad use, and for the further reason that under the rule of law properly applicable thereto the Complainants are entitled to have said terminal lands valued as an entirety according to their fair present value for railroad uses and purposes, measured by their availability for such purposes, and,

when so valued, the appraisement placed thereon by the Complainants' proof, hereinbefore specifically referred to, is the minimum of value that can fairly be placed thereon. (Testimony of Hayden, p. 162 et seq.)

VII.

They except to that finding and conclusion of the Master on p. 75 (Print p. 68) as follows:

Item 2 (Great Northern case), Grading, Clearing and Grubbing, $21,685,802,

for the reason that the Master erred in excluding the following items as stated in said report:

486	Abandoned right of way.....	$135,876.00
	Extra work not of record.....	333,775.00
	Total	$469,651.00

The yardage embraced in abandoned right of way was fully explained and supported by the testimony of the witness A. H. Hogeland as only that yardage necessarily handled in the most economical construction of the lines as they presently exist and includes no yardage of right of way of abandoned lines, and therefore the cost of said yardage was erroneously excluded by the Master. The yardage for extra work not of record as disallowed by the Master includes only a portion of the yardage thus computed and shown by the witness Hogeland, and under the evidence, the Master erred in dissallowing any portion of said yardage so computed and claimed by said witness. The proof establishes, without contradiction, that the total yardage embraced in extra work not of record, as claimed by the testimony of the witness Hogeland and shown in Complainant's Ex. 3 — Hogeland, and further in the testimony of the witnesses James J. Hill and John F. Stevens, is far less than the actual number of yards moved and put into the roadbed of the lines as they now exist, and there exists on the record no reason nor ground for the action of the Master in arbitrarily disallowing any portion of this yardage. (Testimony of Hogeland, p. 1584, as to abandoned lines; p. 1570 et seq. as to extra work not on record.)

VIII.

They except to that finding and conclusion of the Master as shown on page 78 (Print, p. 70) as follows:

Item 5 (Great Northern case), Cross Ties and Switch Ties, $5,460,809,

for the reason that the proof contained in the testimony of the witness Hogeland in Exs. 2—Hogeland, 13—Hogeland and
487 50—Hogeland establishes that the average price of 70.5 cents per tie, testified to and shown in item 5 of Ex. 2—Hogeland, is below the actual average current cost of track-ties for the year

ending June 30, 1908, or for several years prior thereto. The Master erred in fixing the value of the ties in the Great Northern lines in Minnesota by the figure testified to and shown in the exhibits in the Northern Pacific case, and upon the proof in the Great Northern case erred in fixing the value of its ties at 67.2 cents and erred in not fixing the same at 70.5.

IX.

They except to that finding and conclusion of the Master found on p. 79 (Print, p. 71) as follows:

Item 7 (Great Northern case), Rails, $9,053,977.00.

The Master erred in reducing the price of rails as testified to by the witness Hogeland and shown in his Ex. 2, Item No. 7, from $30.75 per ton to $30.25 per ton. The proof in the Great Northern case established by actual current cost that $30.75 was a just and reasonable figure, and there is no warrant in the record to justify the reduction thereof to $30.25. (Testimoney of Hogeland. p. 27 and p. 116.)

X.

They except to that finding and conclusion of the Master found on p. 81 (Print, p. 73) as follows:

Item 10 (Great Northern case), Track-laying and Surfacing, $2,207,753.

The testimony of the witness Hogeland (Comp. Ex. 7 corrected—Hogeland), together with the testimony of the witnesses James J. Hill and John F. Stevens establishes that the amount claimed in item 10 of Hogeland's Ex. 2 of $835 per mile is fair, just and reasonable.

488 Complainant's Ex. 7 corrected—Hogeland, showing the average actual cost of track-laying and surfacing for ten years, 1898 to 1908, to be $851 per mile justifies the figure claimed of $835 per mile for the year ending June 30, 1908, and the reduction made by the Master of $75 per mile for the cost of track-laying and surfacing of the Great Northern lines in the State of Minnesota is without warrant in the evidence and has no support therein. The proof offered by the State on that subject is shown by the report to be of no value and is rejected, and in the absence of other proof, that offered by the Complainants from the books of the Railway Company, showing actual current cost, was rejected without just cause. The Master erred in accepting the figure of $760 per mile shown in the Northern Pacific case, for the reason that the actuel current cost as shown by Complainant's Ex. 7 corrected—Hogeland, on the Great Northern lines,is more, and the proof in the Northern Pacific case, as well as in the Great Northern case, shows that the average figure of $760 per mile, stated in the Northern Pacific case, is unreasonably low and that being true, it was unjust to make use of that figure in reducing the amount that should have been justly allowed in the Great Northern case. (See com. Ex. 84—Darling, N. P. case. Testimony of Stevens, p. 443.)

XI.

They except to that finding and conclusion of the Master found on p. 84 (Print, p. 75) as follows:

Item 11 (Great Northern case), Bridges, Trestles and Culverts, $6,664,729.

The difference between the amount claimed in Hogeland's Ex. 2, item 11, of $6,814,201, and that allowed by the Master as above, is $149,472. The testimony of the witness Hogeland (Ex. 2, Item 11) and that of the witness John F. Stevens establishes that the amount of this item as claimed by the Great Northern figures should have been allowed, being based on current cost as of June 30, 1908,
489 as shown by the records of said company, and there was no warrant in the evidence for the Master to arbitrarily compromise the difference between the State figures and the Complaint's figures by allowing the Complainants but two-thirds of that difference. The proof showed that the figures put forth by the State were not supported by credible or competent proof, whereas the figures testified to by the witness Hogeland were amply justified from actual current experience. (Testimony of Hogeland, p. 29. Comp. Ex. 86—Darling, N. P. case).

XII.

They except to that finding and conclusion of the Master found on p. 86 (Print, p. 77) as follows:

Item 30, Engineering, Superintendence and Legal Expenses (Great Northern case), $3,867,040.

This item was arrived at by the Master by taking 4½ per cent on items 1 to 28 inclusive in the schedules of said items in evidence as modified and found by the Master and is less than the amount shown in Complainant's Ex. 2—Hogeland by $498,309. The Master erred in applying the 4½ per cent to items 1 to 28 inclusive and in excluding item 29, Contingencies. Because of the erroneous reductions in the various items 1 to 28 inclusive as hereinbefore complained of, as well as because of the exclusion of said item 29, Contingencies, from said computation, the allowance by the Master for item 30, Engineering, Superintendence and Legal Expenses, is unreasonably low. The great weight of the testimony in this case proves and establishes that 4½ per cent on items 1 to 29 inclusive is low and in no way excessive, and the Master erred, in view of the state of the proof, in reducing the said amount, as claimed. The testimony of the witnesses Hogeland, James J. Hill and John F. Stevens establishes that the amount as claimed is fair; and
490 the action of the Master in reducing it is arbitrary and unsupported by any relevant or competent proof. (Testimony of Hogeland, p. 46.)

XIII.

They except to that finding and conclusion of the Master found on p. 88 (Print, p. 78) as follows:

Item 39 (Great Northern case), Interest during construction, $17,880,150.

The amount claimed by Complainants as shown in Complainant's Ex. 2—Hogeland, and supported by evidence of the witnesses Hogeland, Hill and Stevens, and in the Northern Pacific record by the witnesses Elliott and Berry, is $27,611,471, or a difference of $9,731,321. The Master erred in reducing the rate of interest from six per cent to four per cent, for the reason that under the testimony of the witnesses Hogeland, Hill, Elliott and Berry, it is established that six per cent is a just and reasonable rate. The Master reduced the rate to four per cent without any proof in the record to support his statement that it would be a fair rate at which money could be procured for construction purposes. The Master erred in reducing the rate from six to four per cent by reference to the evidence contained in the exhibits in the Northern Pacific case, for the reason that all of the evidence of the witnesses aforesaid shows that four per cent is unreasonably low and less than money could be procured for during the period of construction. The Master erred in refusing to allow interest on item 29, Contingencies, and on item 37, General Expenses, for the reason that if those items are proper to be allowed, as they are, it is because those items and the amounts comprehended in them must be expended from time to time during the progress of the work of construction, and therefore the funds necessary therefor must be furnished and interest thereon must be paid during construction. In reducing the rate of interest from six per cent
491 to four per cent the Master in effect found that during the period of eight years, agreed by the witnesses on both sides as necessary for the reproduction of the lines of the Great Northern in the State of Minnesota, the money necessary for that purpose could be procured at par at four per cent, whereas the proof established by the testimony of the witnesses aforesaid is to the effect that interest computed at the rate of six per cent for an average period of four years on all items excepting equipment and at six per cent for an average period of two years on equipment items, is less than could be accomplished, and therefore it follows that an allowance of interest on the basis aforesaid of six per cent should have been allowed, and the Master erred in arbitrarily reducing the rate to four per cent. (Testimony of Hogeland, p. 52, Hill, p. 1269.)

XIV.

They except to that finding and conclusion of the Master found on page 93 (Print, pp. 82 to 84 inclusive) wherein the Master disallowed Complainant's claim No. 37 in Complainant's Ex. 2—Hogeland, entitled General Expenses 1½ per cent, $1,849,841. The testimony of the witnesses Hogeland, Hill and Stevens, and Elliott, Darling and Berry aforesaid, establishes that during the period of construction money is required to be furnished for general expenses to cover the general administration of the property during the construction period, stationery, insurance, taxes, commissions, organization expenses, accounting and purchasing and treasury depart-

ments, and all other expenses that are necessary, and which would not be embraced within engineering, superintendence or legal expenses. The item as claimed covers the cost of the general administration and other items of expense as mentioned for eight years, for which, by the Master's findings, nothing has been allowed. The undisputed proof is that such items of expense are necessary
492 to be incurred, and the Master was without warrant in the record in ignoring and disallowing this item.

XV.

They except for each and every of the reasons hereinbefore set forth to the action of the Master in reducing the amount shown in the testimony and exhibits offered by the Complainants, comprising the cost of reproducing the Great Northern lines in the State of Minnesota as of June 30, 1908, of $157,348,856, to $138,425,291, as shown in the schedule contained in the Master's Report on pp. 93 to 94 inclusive (Print, pp. 82-84).

XVI.

They except to that finding and conclusion of the Master found on p. 97 thereof (Print, p. 86) wherein in considering the subject of depreciation the Master used the following language:

"There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies. No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making."

The Master erred in including the working capital, so-called, as an offset to the depreciation for the reason that the undisputed testimony by the witnesses Hill, Elliott, Stevens, Berry, Hogeland and Darling in the Great Northern and Northern Pacific cases establishes beyond controversy that the appreciation of roadbed, embankments, slopes, etc., more than outweighs the minor elements of depreciation
493 which are not fully compensated for from time to time by maintenance and repairs, and the Master should have found that such depreciation as may exist was more than compensated for by the elements of value arising from appreciation in value as aforesaid, and erred in including working capital as an additional offset to such minor depreciation. Working capital should have been added independently to the present cost of reproduction of the physical property and included as an element making up the present value of the properties in this State, and not less than Minnesota's mileage proportion of the sum of $5,000,000 should have been included. (Testimony of James J. Hill, record, p. 1283.)

XVII.

They except to that finding and conclusion of the Master appearing on page 99 (Print, p. 88) wherein the Master finds that the value of

the operating property of the Great Northern Railway Company in the State of Minnesota upon Minnesota's mileage proportion of the market value of stocks and bonds (Ex. 65—Drew) representing defendant's entire operating system, is $147,425,363, and then finds that "of this amount a very considerable sum must be predicated on property not devoted to the public service, thus reducing the proportion assignable to Minnesota mileage," for the reason that the Master erred in finding, without any evidence in support thereof, that any proportion of said amount was predicated upon property not devoted to the public service.

XVIII.

They except to those findings and conclusions of the Master appearing upon pp. 102 to 104 inclusive (Print, pp. 90 to 92 inclusive) wherein the Master, after ascertaining from the proof offered from the books of the Great Northern Railway Company and its
494 predecessors, that the cost of said entire system of the Great Northern Railway property devoted to the public service was the sum of $319,681,815, finds this amount seems to be reduced to the sum of $295,401,213 by reason of disallowance by him of eight several items aggregating $24,280,602 leaving a balance of only $295,401,213, for the reason that the Master erred in disallowing each and every such item. This exception is intended to be tantamount to a separate exception with regard to the disallowance of each such item.

XIX.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) of the Report, wherein the Master erroneously held that good-will and corporate franchises are not proper elements of value.

XX.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) wherein the Master erroneously held that patronage and good-will of the public are not elements of value to be considered.

XXI.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) wherein, after finding and recognizing as matters of value, the existence in these properties of knowledge derived from experience, adaptation to the needs of the public and readiness to serve, the same were only taken into account as an offset to depreciation arising from use and weather stress and were not assigned any values in addition thereto. Such depreciation as exists in said properties over and above maintenance and repair is shown by undisputed testimony to be more than offset by appreciation of roadbed, and the Master erred in including as an offset to depreciation the
495 aforesaid elements of value comprehended within the term "going concern," and in not assigning thereto a fair and reasonable sum representing the added value in said properties over and

above the bare value of the physical items comprehended in said property. The Master found in Subdivisions numbered XI and XII, pp. 107 to 110 inclusive (Print. pp. 94 to 97 inclusive), that the lines of the Great Northern Railway are efficiently, economically and honestly managed and located and constructed pursuant to public demand, and further found that from the location, connections, character of traffic and prospects of the future growth in business, said properties contain large elements of so-called intangible values over and above the mere cost of reproduction of the physical items comprising said properties, and having so found, erred in failing to assign thereto a fair and reasonable amount covering said values over and above the cost of reproduction.

XXII.

They except to that finding and conclusion of the Master found on p. 111 (Print, p. 98) under Subdivision XIII of said Report, wherein, after finding from the testimony and proof in this case that the cost of reproduction of the entire Great Northern system, after certain deductions as stated in said report, is the sum of $518,206,215, he erroneously assumed to reduce that amount by an arbitrary percentage reduction of 12 per cent, placing the valuation of said system at $457,121,469. The Master erred in thus reducing the value of the Great Northern system, for the reason that there was no testimony justifying said reduction as to the properties of said company aforesaid outside of the State of Minnesota, and as hereinbefore shown, the reductions made by the Master in the values of property within the State of Minnesota were erroneous and unjust.

As to the property outside of the State of Minnesota, the
496 Master arbitrarily and without any support in the testimony, reduced the value of said system 12 per cent, or a total of $61,084,746.

XXIII.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, state and interstate," beginning upon p. 112 (Print, p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," beginning on p. 127 (Print, p. 112) of the Report of the Master, the value of the property of the Great Northern Railway Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and when so divided, the results have been applied by the Master, by the computations in said Report employed, to determine the net return from the intrastate passenger and freight business of said company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainants except to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and except for the same reasons, to the proportionate

valuations based upon said total valuation as separated and segregated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainants. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainants except to each and every determination and conclusion reported by said Master in any manner de-
497 rived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

XXIV.

They except to that finding and conclusion of the Master found at p. 122 of the Report (Print, p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found."

for the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found—or upon the full value of the property as claimed by Complainants—will not be sufficient to yield to Complainants and said company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

XXV.

They except to the Master's finding and determination found at p. 133 of the Report (Print, p. 117) as follows:

"The Master finds from the weight of testimony that the cost per ton mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one."

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master, fixing the cost of doing intrastate freight business lower than is warranted by any evidence in the case.

498 And they except to the failure of the Master to find that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is the cost of doing the interstate freight business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence. (Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Great Northern record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Great Northern record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Great Northern record, p. 305, etc.; James N. Tittemore, M. & St. L. record, p. 780, etc.)

XXVI.

They except to that finding and conclusion of the Master found on p. 133 (Print, p. 117) as follows:

"He also finds from the evidence that the cost per passenger mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota."

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master in fixing the cost of doing intrastate passenger business lower than is warranted by any evidence in the case. And they except to the failure of the Master to find that the cost per passenger mile of doing intrastate passenger business in Minnesota is at least twenty-five per cent greater than the cost of doing interstate passenger business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence.

(Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Great Northern record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Great Northern Record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Great Northern record, p. 305, etc.; James N. Tittemore, M. & St. L. record, p. 780, etc.)

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XXVII.

They except to each and every finding, determination and conclusion of the Master to be found in Subdivision XVII commencing at p. 127 of said Report (Print, p. 112), entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," dependent upon or derived from the finding hereinbefore excepted to at No. XXV, to the effect that the cost per ton mile of doing intrastate freight business in Minnesota is at least two and one-half times as much as is such cost of doing the interstate freight business in Minnesota—or the finding last above at No. XXVI hereof excepted to, to the effect that the cost per passenger per mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota, for the reasons stated in such exceptions, respectively. It is the intention that this exception shall be tantamount to exceptions stated separately to each and every determination and conclusion of the Master based upon either of the findings so as aforesaid excepted to; and they except to the failure and refusal of the Master to find and determine facts which would be derived and follow from findings in substance as follows, namely, (1), that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is such cost in doing the interstate freight business in Minnesota, and (2), that the cost per passenger per mile in the state passenger business in Minnesota is at least twenty-five per cent greater than such cost in the interstate passenger business in Minnesota.

On the valuation found by the Master, and apportioned between the freight and passenger business—intrastate and inter-
500 state of each—on the basis employed by the Master in his Report, and on the assumption that all of the other facts found by the Master are true (except the factors of extra cost), if the last mentioned factors of extra cost of the intrastate freight business and intrastate passenger business respectively be used in the same manner as were the extra cost factors used by the Master in his Report, results will be produced substantially as indicated in the following table, to-wit:

(Here follows table marked page 500½.)

RESULTS IN GREAT NORTHERN CASE

Pomeroy Complainant's Exhibits 47 and 48—Martin and 53—Ward, together with reports of Great Northern Railway Co., Minneapolis Western Railway and Duluth Terminal Railway to State of Minnesota as explained in Statement 3-B attached. Division of Operating Expenses, Miscellaneous Earnings, Outside Operations, Rentals, Hire of Equipment and Taxes between Intrastate and Interstate as shown in the body of statement.
Year Ending June 30, 1908.

	Intrastate		Interstate		Total	
Freight revenue	$2,366,359.02	= 15.112%	$13,292,302.05	= 84.888%	$15,658,661.07	= 100%
Miscellaneous freight earnings divided on basis of revenue	42,062.41	= 15.112%	236,275.37	= 84.888%	278,337.78	= 100%
Freight earnings	$2,408,421.43	= 15.112%	$13,528,577.42	= 84.888%	$15,936,998.85	= 100%
Passenger revenue	$1,750,522.02	= 48.083%	$1,890,105.43	= 51.917%	$3,640,627.45	= 100%
Miscellaneous passenger earnings divided on basis of revenue	335,754.66	= 48.083%	362,526.79	= 51.917%	698,281.45	= 100%
Passenger earnings	$2,085,276.68	= 48.083%	$2,252,632.22	= 51.917%	$4,338,908.90	= 100%

Operating Expenses:	Freight	Passenger	Total
Transportation expenses	$3,921,805.03	$1,471,759.25	$5,393,564.28
Maintenance of way and structures	1,905,856.44	1,328,835.87	3,234,692.31
Maintenance of equipment	2,034,122.76	651,586.24	2,685,709.00
Traffic expenses	131,811.40	116,530.14	247,941.54
General expenses	148,259.98	101,347.24	249,607.22
	$8,141,355.61	$3,670,058.74	$11,811,414.35

Cases for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 3 Interstate ton miles.

	Actual			Equated Ton Mile Basis: Equated	Proportion	Freight Operating Exps.
Intrastate ton miles	171,317,766	× 3	=	513,953,298	= 20.84%	$1,696,658.50
Interstate ton miles	1,952,426,967	× 1	=	1,952,426,967	= 79.16%	6,444,697.11
	2,123,744,733			2,466,380,265	= 100.%	$8,141,355.61

	Actual Revenue			Equated Revenue Basis on methods explained in Notes 3 and 4, Statement No. 1: Equated Revenue	
Intrastate ton miles	$2,366,359.02	× 1.4786	=	$3,498,898.42	= 20.84%
Interstate ton miles	13,292,302.05	× 1.	=	13,292,302.05	= 79.16%
	$15,658,661.07			$16,791,200.47	= 100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 125 Interstate passenger miles

				Equated Passenger Mile Basis: Equated	Proportion	Freight Operating Exps.
Intrastate passenger miles	92,053,657	× 1.25	=	115,067,071	= 55.478%	$2,036,075.19
Interstate passenger miles	92,341,852	× 1.	=	92,341,852	= 44.522%	1,633,983.55
	184,395,509			207,408,923	= 100.%	$3,670,058.74

	Actual Revenue			Equated Revenue Basis: Equated Revenue	
Intrastate passenger miles	$1,750,522.02	× 1.3455	=	$2,355,227.38	= 55.478%
Interstate passenger miles	1,890,105.43	× 1.	=	1,890,105.43	= 44.522%
				$4,245,434.81	= 100.%

Divided on basis of earnings { Freight	$15,936,998.85	= 78.6%	
Passenger	4,338,908.90	= 21.4%	
Total	$20,275,907.75	= 100.%	

	Totals	Freight 78.6%	Passenger 21.4%
Rentals received	$378,934.32		
Rentals paid	56,504.84		
Net rentals received	$322,339.48		
Hire of equipment received	140,424.47		
	$462,763.95	$363,732.46	$99,031.49
Taxes paid	839,878.11	660,144.19	179,733.92

Summary of Results.

Freight Business:	Intrastate		Interstate		Total	
Earnings	$2,408,421.43	= 15.112%	$13,528,577.42	= 84.888%	$15,936,998.85	= 100%
Proportion of rentals and hire of equipment	54,967.25	= 15.112%	308,765.21	= 84.888%	363,732.46	= 100%
	$2,463,388.68	= 15.112%	$13,837,342.63	= 84.888%	$16,300,731.31	= 100%
Operating expenses	$1,696,658.50		$6,444,697.11		$8,141,355.61	
Taxes	99,761.00	= 15.112%	560,383.19	= 84.888%	660,144.19	= 100%
	$1,796,419.50		$7,005,080.30		$8,801,499.80	
Income applicable to valuation	$666,969.18		$6,832,262.33		$7,499,231.51	
Valuation 78.6% of $138,425,291.00	16,442,200.00	= 15.112%	92,350,079.00	= 84.888%	108,802,279.00	= 100%
Annual return on valuation	4.056%		7.397%		6.893%	
Passenger Business:						
Earnings	$2,085,276.68	= 48.083%	$2,252,632.22	= 51.917%	$4,338,908.90	= 100%
Outside operations	44,546.91		48,098.96		92,645.87	
Proportion of rentals and hire of equipment	47,617.31		51,414.18		99,031.49	
	$2,178,440.90	= 48.083%	$2,352,145.36	= 51.917%	$4,530,586.26	= 100%
Operating expenses	$2,036,075.19		$1,633,983.55		$3,670,058.74	
Taxes	88,421.46	= 48.083%	93,312.46	= 51.917%	179,733.92	= 100%
	$2,122,496.65		$1,727,296.01		$3,849,792.66	
Income applicable to valuation	$55,944.25		$624,849.35		$680,793.60	
Valuation 21.4% of $138,425,291.00	14,243,633.00	= 48.083%	15,370,379.00	= 51.917%	29,623,012.00	= 100%
Annual return on valuation	0.393%		4.065%		2.298%	
Freight and Passenger Business:						
Total income in Minnesota applicable to valuation	$722,913.43		$7,457,111.68		$8,180,025.11	
Valuation	30,685,833.00		107,720,458.00		138,425,291.00	
Annual return	2.356%		6.921%		5.909%	

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $87,261.43, nor a loss of $208,923.43 that would have accrued on Interstate commodity business in Minnesota. (Complainants' Exhibits 22, 24, 26 and 28—Parker.)

501 XXVIII.

They except to the action of the Master in including in the item "Income applicable to Valuation," appearing on the table following p. 152 of the Report (Print, p. 134), and elsewhere in said Report, any portion of the revenue derived from "net rentals received," "hire of equipment received" and "outside operations," and the failure of the Master to assign any portion of the total value of the property in the State to the items so claimed by Complainants, to have been erroneously included, for the reason that the items so erroneously included were "net items," and that if the valuation of such total property be apportioned or assigned on the gross revenue basis directly to intrastate freight, interstate freight, miscellaneous freight, intrastate passenger, interstate passenger, miscellaneous passenger, "outside operations" (taking "gross" instead of "net"), "rentals received and hire of equipment," the rate of return on property used in the intrastate freight business (assuming as right the total valuation and factor of extra cost as found by the Master) would be only 5.33 per cent. And upon the valuation found by the Master, and the fact that it costs three times as much to produce a ton mile in the intrastate freight business in Minnesota as it does in the interstate freight business in Minnesota, such rate of return on the property used in such intrastate freight business would be only 3.93 per cent, and upon a full and fair valuation of the total property in Minnesota, such rate of return would be substantially less, and that in truth and in fact such rate of return is substantially less than 3.93 per cent in the intrastate freight business of said Great Northern Company; and in like manner, the rate of return on the intrastate passenger business would be substantially less than as found by the Master. For the reasons aforesaid, the Master erred in stating the computations, tables and results of the business of said
502 company, freight and passenger, under the rates in question in the State of Minnesota as they appear in said Report, and erred in failing to state the proper division of the property as aforesaid to the various classes of revenue.

Wherefore the Complainants pray that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

ROBERT THORNE,
HALE HOLDEN,
HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

Dated October 20, 1910.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

503 In the United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al., Defendants.

Exceptions by Complainant to Report of Honorable Charles E. Otis, Special Master.

The Complainant makes the following exceptions to the Report of the Special Master, dated September 21, 1910:

I.

He excepts to that finding and conclusion of the Master appearing upon page 17 (Print. p. 16) being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainant that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906, and May 3, 1907, fixing merchandise or class rates within the
504 State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake work of securing a readjustment of the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class-rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S., 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

He excepts to that finding and conclusion of the Master appearing upon page 19 (Print. p. 18), being Subdivision IV, entitled "Effect of prescribed rates, if confiscatory as to the one line of railway and not another," wherein the Master overruled the contention of the Complainant that both the acts of the Legislature and the orders of the Railroad & Warehouse Commission, being by their express

terms of general application to all railroads doing business in the State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are general in their terms and expressly apply to all railroads operating
505 in the State of Minnesota, and contain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in finding, in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S., 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S., 514, Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S., 79, these acts and orders, if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable, in their terms, unconstitutional and void as to all other companies in the State.

III.

He excepts to that finding and conclusion of the Master appearing on pp. 68 and 69 of the Report (Print. p. 60) in Subdivision VII of the Report, entitled "Real Estate Valuations as of June 30, 1908" fixing the total value of lands of said Minneapolis & St. Louis Railroad Company in the State of Minnesota, as follows:

506

Minneapolis & St. Louis case, amount allowed	$5,999,397.90
Minneapolis, appraisement of Elwood, Barney and Ridgeway	4,556,298.00
Add 5 per cent for cost of acquisition and consequential damages	227,814.19
Land outside of terminals	1,215,285.00
Grand total	5,999,397.90

The Master erred, without testimony or evidence, in arbitrarily adding only 5 per cent to the appraisement of the terminal lands at Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof shows that in considering the fair value of the right of way and terminal lands in Minneapolis, 5 per cent added to such appraisement is unjustly and unreasonably low, and that to fairly state the value of said terminal lands at Minneapolis for railroad purposes, separate consideration of the different parcels of said land was necessary, and a varying range of percent-

ages, according to location and the particular circumstances surrounding each parcel, should have been used ranging from 5 to 40 per cent. The arbitrary addition of only 5 per cent to all of said lands was without any support whatsoever in the evidence, and the Master erred in limiting the percentage addition to the appraised value of said lands to 5 per cent, as aforesaid. (See testimony Thomas Cooper, Record, pp. 211, etc., 1059, 1066, Comp. Exs. 29 and 30—Cooper.)

IV.

He excepts to that finding and conclusion of the Master shown on page 78 (Print. p. 70) as follows:

Item 5, Minneapolis & St. Louis case, amount allowed (cross-ties and switch-ties) $1,149,829

and especially the deduction of 32,000 ties from the number claimed by Complainant, and the value thereof, at 70 cents per tie.

507 The testimony of the witness Alvin S. Cutler, and Ex. 29—Cutler (See p. 918, etc.) clearly shows the number of ties claimed by Complainant should have been allowed, and there is no testimony in the record sufficient to sustain the finding of the Master that 32,000 ties should be deducted from that number.

V.

He excepts to that finding and conclusion of the Master found at p. 83 of the Report (Print. p. 74) as follows:

Item 10, Minneapolis & St. Louis case, amount allowed (Track-laying and surfacing), $384,751.

The testimony of the witness Cutler (Ex. 30—Cutler, p. 950, M. & St. L. Record), together with the testimony of the witness Hogeland (See Comp. Ex. 7 Great Northern record), and the testimony of the witness- James J. Hill and John F. Stevens, clearly establish that the sum of $835 per mile is fair, just and reasonable, whereas the Master has allowed only $760 per mile.

VI.

He excepts to the action of the Master in reducing the figures shown in the testimony offered by the Complainant and the exhibits offered in connection with the witness Cutler, on the ground that there is no testimony justifying such reduction, and that the testimony in the case requires findings of value as claimed by the Complainant.

VII.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, state and interstate," beginning upon p. 112 (Print. p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," beginning

on p. 127 (Print. p. 112) of the report of the Master, the
508 value of the property of the Minneapolis & St. Louis Railroad Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and, when so divided, the results have been applied by the Master to ascertain, by the computations in said Report employed, to determine the net return from the intrastate passenger and freight business of said Company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainant excepts to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and excepts, for the same reasons, to the proportionate valuations based upon said total valuation as separated and segregated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainant. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainant excepts to each and every determination and conclusion reported by said Master in any manner derived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

VIII.

He excepts to that finding and conclusion of the Master found at p. 122 of the Report (Print. p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found."

509 & 510 For the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found,—or upon the full value of the property as claimed by Complainant,—will not be sufficient to yield to Complainant and said Company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

Wherefore the Complainant prays that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

Dated October 20, 1910.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration

by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

511 Circuit Court of the United States, District of Minnesota, (Third Division).

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Minnesota Rate Cases.

The exceptions hereinafter contained are offered on behalf of defendants, Charles F. Staples, Ira B. Mills, Charles E. Elmquist and George T. Simpson only, and wherever in said exceptions the term "defendants" is used, it is intended to mean only said last named defendants.

512 Now come the defendants above named, and present to Hon. Charles E. Otis, the special Master in the above entitled action, their exceptions to the findings of fact and conclusions of law hereto served by him on counsel for the respective parties as his proposed report herein. As the findings contained in said Master's report in said several actions are similar so far as the rules applied are concerned, counsel will as far as possible, where the application of such rules is expected to state the reasons for the exception but once, such reasons to be taken as applying to each of the cases. Counsel will also endeavor to make their exceptions to the several findings in the order in which said findings are found in the Master's report.

Counsel respectfully except:

I.

To that part of the report of the Master, and the arguments in support thereof found on pages twenty (20) to sixty-one (61) of said report inclusive, wherein certain statements of fact are set forth at great length in reference to the alleged interference between the rates here involved and the interstate rates of the railroad companies concerned, wherein the Master states his conclusions in the following language:

"The facts as found establish conclusively that the State, in the rates prescribed by it, has not kept within the limitations imposed upon it, and has exceeded its constitutional powers, in that such rates constitute a direct interference with and impose a burden upon interstate commerce, and effect unjust discrimination between interstate localities."

This exception is intended to apply to each of the findings upon which the conclusion is based, as well as to the conclusion itself, in each of the cases.

513 Defendants contend in support of this exception, that each of said findings and said conclusion, so far as they find that the rates here involved directly or necessarily interfere with interstate rates, or in any manner exceed the constitutional power of the State, or conflict with constitutional federal authority, are not supported by the evidence and are contrary to law. The federal sovereignty possesses only such powers as were granted to it by the Federal Constitution, and such other powers incidental thereto as may be necessary to make the granted powers effective.

The Federal Constitution gave the Congress exclusive control over all commerce and transportation, beginning in one state and ending in another, but gave it no power over commerce beginning and ending in the same state. The Interstate Commerce Act provides for the regulation of transportation carried on between different states, but provides by its terms that it shall not apply to any commerce, the movement of which begins and ends in the same state. The laws here involved by their express terms apply only to transportation beginning and ending within the state of Minnesota, so that the Federal and State laws operate in different fields and do not overlap or conflict. The Federal Supreme Court has many times passed upon the respective commerce powers of the states, and the nation, and has always adhered to the construction of the Federal Constitution announced in the case of Covington B. C. vs. Kentucky, 154 U. S. 204, where it was stated that the power of the Federal government is exclusive over interstate commerce, and that the power of each state is equally exclusive over its internal commerce. As the laws here involved apply only to business beginning and ending within the state, no railroad company doing business here can apply them, contrary to their terms, to interstate business and then allege its own unwarranted action as a ground for holding the laws void.

514 The constitutional relation between the nation and the states is not elastic. The orbit of each sovereignty is rigidly fixed by our written constitution and cannot be changed except by the people. The law of a state affecting a subject of Federal jurisdiction is void, and a Federal law affecting a matter subject to state jurisdiction is also void. The Federal Employers' Liability Act was held to be void because it applied to the employees of railroads while engaged in handling commerce wholly within a state, Congress having no control over that subject. There is absolutely nothing at variance with former decisions in the case of Western Union vs. Kansas, 216 U. S., cited by the Master as justification for this finding.

A holding that would cripple the commerce power of the states would not enlarge the commerce power of the nation.

II.

Defendants also except to the valuation made by the Master of the property employed in the state by each of the above named railway companies and to the entire plan adopted for fixing such valuation, for the following reasons:

The Master ignored the original investment of the companies as a measure of the maximum value upon which they are entitled to a return, and also ignored the outstanding stocks and bonds of each of the companies though such stocks and bonds exceeded the actual investment. He adopted the so-called "cost of production" as the sole measure of the value of railroad property. There are many bases on which such a speculative valuation could be made. The plan followed by the Master in these cases reduces railroad valuation to a mere exploit of the imagination. Under it, the value of the railroad property can be fixed at any figure which interested parties will swear they believe it to be worth, and if such a plan is upheld by the courts, railroad companies can make the public pay any rates they see fit to charge.

515 The companies start with the fact that lands taken for railroad purposes cost something more than the ordinary market value, on account of what might be called severance damages, which in some cases are small and in others large, the amount depending on the circumstances of each case. They take the total amount of this extra cost, and find what percentage it is of the market value, per acre, of the lands, at the time they were acquired (being generally about 200% of that value) and assume that this severance damage would be the same percentage of present market value of their land if it had to be acquired now, as it was of its original cost.

The other postulates for getting at the cost of reproduction adopted by the Master are:

1. Assume that the railroad is not in existence, but that those things which have resulted from the existence of transportation facilities, the development of the country and the growth of the cities, and present property values, remain unchanged. That under these impossible conditions the railroad company was obliged to acquire its lands now and employ the necessary labor and obtain the necessary ties, lumber and other construction material, and equip the road at present prices.

2. Having found the highest present market value of the lands necessary for right of way, yards, terminals, etc., increase that value by the same percentage of the present value of the land as the severance damages paid at the time of its acquisition, were of its then value.

3. Fix an arbitrary time for reconstructing the road, eight, ten or more, years, and allow interest on the entire estimated cost for half the period.

4. Where the road crosses or runs along a public street where no charge was made by the city, or, as in some cases, the road passes over

bridges or through tunnels constructed by the cities, include the cost of all such structures, and the value of the streets as a part
516 of the value of the railroad. Make no deductions for free rights of way over government lands, or other public donations.

No more potent scheme for the inflation of railroad values could possibly be invented. It sets at naught all the laws of this and other states, against the issuance of watered or fictitious stocks and establishes a watered basis for income irrespective of stocks.

Defendants contend that, as the Federal Supreme Court has often stated, railways are public highways, and that in operating them the railroads are performing a governmental function. That their lands were acquired either as a gift from the government, or by the exercise of the sovereign power of the state; that the right in the lands acquired in either case was the right to use them for the specified public purpose, not for private speculation. The power of eminent domain by which their lands were acquired, is the same power employed by the State itself, when it needs land for public highways, or other governmental purposes, and we contend that land so acquired by a railroad company is just as irrevocably dedicated to public use as if acquired by the State itself, for a public purpose. The only private investment in the transaction is the money actually invested by the railroad company in acquiring the land and in constructing and equipping the road. On the money so invested, but on nothing more, the railroad company is entitled to a reasonable return. The railroads cannot, at the expense of the public, for their own private gain, capitalize by a fictitious valuation, the public highways used by them in carrying on the governmental function which they are engaged in performing.

Defendants, therefore, except to the valuation found by the Master in each case, and to every specific part and portion of such valuation, whether of the whole or of any part of either of the roads involved, and ask that the valuation be fixed at the actual cost of each
517 road as is shown by the evidence, and if in either case such such original cost is not sufficiently shown, that the action be dismissed for a failure of proof on the part of the complainant.

Defendants also invite the Master's attention to the fact that these are not actions brought by the several railroad companies; the actions were brought by the stockholders of the several companies, ostensibly to protect their rights as stockholders. A railroad stockholder has no right in law to claim a return from the public on anything more than the face of the valid stock held by him. At the suit of a stockholder the value found cannot, in any view, exceed the outstanding stocks and bonds.

III.

Defendants also respectfully object and except to the apportionment made by the Master of the value of the property of the various railroads situated in this state, between the passenger and freight business carried on by them. The exception is intended to apply to the method followed in making such apportionment, as well as to the result.

Defendants concede that after the value of the property used in the state by any company has been found, it is necessary to apportion that value between the passenger and freight business, and to reapportion such value between the interstate and intrastate freight business, and the interstate and intrastate passenger business respectively, in order to ascertain the actual value of the property used in the strictly intrastate business of the company, as that is the only business over which the State has jurisdiction.

The original division of that value between the passenger and freight business is somewhat difficult, because the units of production—the ton mile and the passenger mile—do not reflect with exactness the extent to which the property is used in their respective production. Another consideration which is important on
518 this subject is that all the property is not used in common in these two branches of the business. Freight and passenger equipment are almost entirely distinct; while engines are not rigidly assigned to either branch, the relative value of passenger and engine service can easily be determined by getting the engine miles employed in each service, and thus supporting the engine value assigned to the State. Side tracks, and the extensive switching yards and terminal property in the large cities, and such property as Minnesota Transfer, are nearly all freight utilities; their value should be ascertained and assigned to freight business, and only property used in common be divided on an arbitrary basis. The Court has no right to fix the relation of rates, and can only consider whether the property used in intrastate business is, under the laws of the State, allowed to earn such income that confiscation of the property cannot be asserted; but the means for reaching a just conclusion on that subject are made more simple by finding, as nearly as possible, what property is used in the passenger business and what in the freight business.

The error committed by the Master is not so much a matter of misconstruing the evidence, as of adopting an unjust basis upon which to make the computation. There is not, even after having allocated to each branch the value of the property used exclusively therein, a sufficient similarity between the passenger mile and the ton mile to furnish an ideal criterion as to the amount of use made of the property in the production of either. The train service, the revenue and cost, are different as to each. The passenger mile revenue is two cents, in intra business, while the intra ton mile revenue on the Great Northern (53—Ward) is .01381 cents, and on the Northern Pacific (80—Elliott) the intra ton mile revenue is .011910 cents. The difference in unit revenue, while arbitrary, is theoretically founded on the difference in the cost of the service. If the
519 question were one of fixing rates, instead of determining whether the State is guilty of confiscation, the object would be to make such adjustment of the rates that the net profit in each branch would, in proportion to the service rendered, be on a substantial parity. The prime object here is to get at the value of the property assignable to intrastate business, and for that purpose a fair and equitable basis for the division must be found. Revenue

is not a just or trustworthy basis upon which to make the division; the division on that basis would, for many reasons, apportion too great a proportion of the value to the passenger business. If it cost no more to produce a passenger mile than a ton mile, the passenger business at present rates would be unduly profitable, on account of the greater unit revenue. If the apportionment be made on the basis of that revenue, it assigns more to the passenger business than the unit production would justify, even if the rates were properly related. Such an apportionment assumes that freight and passenger unit cost bear the same relation to each other as freight and passenger unit revenue, but that is not true, and the Master has not so found. The Master divided the value between the two branches on a flat revenue basis, but has divided the cost on another basis, which assigns a still greater proportion of cost to the passenger business. The passenger business, therefore, is charged with more than its share of the value of the property, and also with more than its share of the cost.

The revenue basis of division is also inherently wrong in any case where the justness of rates is the question to be determined, because if passenger rates are too high, and the revenue excessive, the value of the property assigned to the business will be accordingly too great; and if the rates are too low, the reverse of this will be the result. If too great value be assigned to the passenger business, too little will be assigned to freight, and vice versa. Lowering the rates on
520 freight would, by this method, increase the value of the property to be assigned to passenger business. While the ton and passenger mile basis of division is not ideal, it has the merit of being stable, and comes very much nearer showing the relative use of the property than does the gross earnings.

Many other tests can be applied for the purpose of verifying the approximate accuracy of the division on the ton and passenger mile basis. The relative value of freight and passenger equipment throw some light on the probable relative use of the property. That relation is nearly the same as the ton and passenger mile relation. Again the passenger car miles, and the freight car miles are a good test of the relative use. That relation differs but slightly from the ton and passenger mile relation. If the passenger engine miles were added to passenger car miles in intra service, and freight engine miles added to freight car miles before making the comparison it might be fairer. The relative train miles would be no basis, because the weight and number of cars in a freight train differ so radically from the weight and number of cars in a passenger train. In the absence of a better basis, we shall insist on the division being made on the relative ton and passenger miles, which would give a very different result from that found by the Master.

IV.

Defendants object and except to the division of the value of the railroad property made by the Master betwen the state and interstate business, both passenger and freight.

Such division should be made in proportion to the use made of

the property by each of the classes. The Master has assumed to make this division also, on the basis of the relative gross earnings, but that basis is clearly unfair to the intrastate business. It appears from the evidence and is found by the Master that the intrastate ton mile revenue in this State is greater than the interstate ton mile revenue.

521 In the Great Northern case (53—Ward) the intrastate ton mile freight revenue is as compared to interstate, as 2.03 to 1. In the Northern Pacific case the relation is 1.43 to 1 (80—Elliott).

Under these circumstances a division of the value of the Great Northern property used in the freight business in this State, between interstate and intrastate on the gross earnings basis assigns to the intrastate business, in proportion to its volume, more than two dollars of such value, for each dollar assigned to interstate. To illustrate, if all the business were freight, and the ton miles of inter and intra business were equal, the intrastate revenue on the Great Northern would be a little more than twice the interstate revenue. A division of the value of the property employed in the business, between the two classes on the gross earnings basis would, in such case, assign to interstate business, and require it to earn a dividend on only one-third of the value, intrastate business would be required to earn a dividend on two-thirds, which would be manifestly absurd.

The same injustice in kind, though somewhat less pronounced in degree, would result from a division of the Northern Pacific value in the State on the gross earnings basis. The Master suggests that it would be no more favorable to the State if the division were made on the basis of the cost of the service as found by him between inter and intra. The truth of that statement is self-evident, because he has found that in the freight business the relation of unit cost intrastate to unit cost interstate is as 2.5 to 1. To divide on that basis would increase the burden upon the intrastate business. The Master finds in the Great Northern case that the intrastate gross earnings are 15.11% of the total freight earnings, but that the intrastate cost is 17.99% of the total State cost. It is clearly better for the intrastate business to be charged with -he former percentage of

522 the value of the property employed in the State, than the latter, but neither percentage is right, as a measure of the value to be assigned to intrastate freight. If the gross earnings are to be used at all as the basis of division, they should be properly equated so as to reduce them to a common unit basis.

In the Great Northern case the interstate earnings should be multiplied by 2.03 before making the division; this would bring them to the amount they would reach if the interstate business produced the same ton mile revenue as the intrastate. But even if the revenue were equated to make it represent the same number of units of production, earnings would still be an unsatisfactory and unreliable basis, upon which to make the division of the value of the property, because they bear no fixed relation to the use of the property, in the two classes of business.

Rates and resulting earnings are more or less arbitrary, and may be changed at will, while the relative use of the property in the two

classes of business arises out of the natural conditions, which are not subject to material change.

But aside from the instability, the inherent defect in the gross earnings as a basis for the division, lies in the fact that if the earnings upon either class should be too high or too low, the share of the value of the property assigned to it would be correspondingly too great or too small. If interstate rates should be reduced the value assignable to interstate business would diminish with the revenue, and automatically attach itself to the value assignable to intrastate, while there would be no change whatever in the relative volume of the business. If a reduction were made in intra rates, the effect on the value would be reversed. Division on this basis is criticised by the Federal Supreme Court in the case of C. M. & St. P. Ry. Co. vs. Tompkins, 176 U. S. 167.

Division on the basis of cost would not be subject to the fluctuations involved in a division on the gross earnings, and if the unit
523 cost was the same throughout, that would be an unobjectionable basis. But inasmuch as unit cost differs in the different classes, cost could not be used without being equated.

The simple and entirely unobjectionable basis for the division is the unit of use. Between inter and intra freight the ton mile is the perfect and only unit, reflecting, as it does, the two fundamental elements, weight and distance. It is the only basis on which the two classes of freight business can be compared as to volume, and is the only basis upon which the value of the property employed in hauling them can be fairly divided between them.

In the Great Northern case the intra freight ton miles for the year 1908 (Ex. 20—Parker) were 8.07% of the Minnesota freight business. As above stated, the gross earnings of the intra freight were 15.11% of Minnesota freight earnings, and (as found by the Master) the intra freight cost was 17.99% of the Minnesota freight cost. Dividing the value of the property employed between inter and intra freight on the gross earnings basis would require 8.07% of the business to pay a return on 15.11% of the property, making the division on the relation of cost of the service, as so found, would require 8.07% of the business to pay a return on 17.99% of the property.

Dividing the value of the property assigned to the Minnesota freight business by the Master on the different bases mentioned, gives these results:

8.07% is	$8,780,343
15.11% is	16,442,200
17.99% is	19,573,520

In the Northern Pacific case the intra ton miles are 12.33% of the Minnesota business (54—Johnson). The intra gross earnings are 16.35% of the intrastate earnings, and the intra cost, as
524 found by the Master, is 25.362% of the Minnesota freight cost. The value of the property assigned to Minnesota freight, divided on these different bases, gives the following results:

12.33% of the value is..... $8,192,738
16.35% of the value is..... 10,867,837
25.36% of the value is..... 16,850,596

Revenue which would be ample to pay a reasonable income on the valuation assigned to intrastate freight on the true or ton mile basis, might appear entirely inadequate if applied to the value assigned to that class of business on the false basis of gross earnings, or the still more false basis of the unequated relative cost. The same reasoning applies with equal force to the Minneapolis & St. Louis case.

V.

Defendants object and except to the division of operating expenses between freight and passenger business in the State, and to the method employed in making the division in the Great Northern and Northern Pacific Cases.

The Master divided the value of the property between the two classes on the gross earnings basis, which we insist is unfair to the passenger business, but when the Master assigns the gross operating expenses in the State between the freight and passenger business he adopts an entirely different basis for the division. The gross earnings basis would be unfair but the plan followed is unfairer. Dividing the total cost in the State between freight and passenger on the gross earnings basis adopted by the Master for division of the value would, in the Great Northern case, assign 21.4% of the cost to passenger and 76.6% to freight business. This would make the gross passenger cost in the State approximately $2,500,000.00. The Master has assigned as passenger cost in the State on the Great Northern, $3,670,058.00.

525 A division of the cost between freight and passenger on the Northern Pacific on the gross earnings basis would assign 73.6% to freight and 26.4% to passenger business. This would make the passenger cost on that road for the State approximately $2,050,000.00. The Master assigns to the passenger business in the State on that road $2,311,631.00.

There was a good deal of controversy at the trial between the parties to the action as to the basis for dividing the unallocated operating cost between passengers and freight. Each presented a method of division based on use. The theories employed for determining the extent of the use, however, differed very materially. The railway companies followed a plan the essential basis of which was an apportionment according to the revenue train miles. or the "revenue" engine miles, in the two branches of the business. Some of the items of cost are divided by the companies on other arbitrary bases, but the train mile was the controlling characteristic of their plan. The State contended that a passenger train mile and a freight train mile were so essentially different that they could not be made the basis for correct comparison between the use made of the property in the passenger business and the use made of it in the freight business. It also appeared from the testimony of the railroad wit-

nesses, that about 30% of the engine mileage was employed in switching. There was no serious controversy about the fact that fully 95% of the switching was incurred in the freight business and not over 5% thereof in the passenger business. The State contended, therefore, that as to all items of cost divided on the train mile basis, the actual freight train mileage should be increased by adding thereto 95% of the switching mileage, and the passenger train mileage increased by 5% of the switching mileage before making the apportionment. The State contended that if the switching mileage was not taken into account in this way, that apportioning the cost on the train mile basis would impose on the passenger business very
526 much more than its share of all the items of operating cost apportioned on that basis. That the State's claim was well founded is demonstrated by the fact that the apportionment made by the railway companies, which was adopted by the Master, imposed upon the passenger business a greater proportion of the total cost than would be imposed upon it by the manifestly unfair gross earnings basis.

The plan adopted by the Master was shown to have been approved by the Interstate Commerce Commission, but that soon afterwards such approval was withdrawn. The discrediting of the method by the Interstate Commerce Commission was presumably because of its inherent unsoundness.

We insist on the division made by the State, or at least that the division be no more unfair than the gross earnings basis.

VI.

Defendants object and except to the finding of the Master as to the relative cost of doing intrastate and interstate freight business.

The finding of the Master that the relative cost of doing intrastate freight business in Minnesota is two and one-half times the cost of handling interstate business, is not only wholly unjustified by the evidence, but it is in conflict with the findings in every other case on the subject, reported in the books. Passing the finding on that subject in the Ames case, which on account of the very peculiar language used by the witness for the State, whose testimony was followed, makes the case inapplicable here, we find the two cases which have been tried on the merits in the Circuit Court, are the Keyes case in North Dakota and the Missouri rate cases.

It is not easy upon a casual reading to understand just what Judge Amidon intended to find as to the relative cost of doing the intra business in that state as compared with inter, but a careful analysis of his decision shows that he intended to find, and did find,
527 that the extra cost was to be found only in the items regularly grouped by the railroads under the head of "conducting transportation." That cost, he held, was twice as great for the intra business as for all business. After stating that the evidence before him on this question was wholly uncontradicted, he said:

"Many witnesses were called by the plaintiffs to testify in respect to the relation of cost to revenue in the case of local business as

compared with the entire business of the companies. By none of them is the expense of conducting transportation placed at less than twice as much in the former case as in the latter. Mr. Earling, General Manager of the Milwaukee road, a person of great experience and apparent candor, stated, that the total cost of conducting local business on the entire system of that road was at least twice as great as for through business, and that in sparsely settled communities like North Dakota where traffic is light, such cost was four or five times as great in the one case as in the other."

After finding on this testimony that intra, as to the haul, cost twice as much as inter, he further said:

"The operating expenses of a railway consist of two principal items: (1) cost of maintenance of plant; (2) Cost of conducting transportation. The former item is constant, and can justly be divided between the different kinds of traffic in proportion to their volume.

As to the second item, however, such a division cannot properly be made; for it is agreed by all who have occasion to consider the subject, railroad commissioners as well as railroad officials, that the cost of conducting transportation, is relative to revenue much higher for local business than for the general business of a road."

What Judge Amidon actually found, therefore, from the undisputed evidence on the subject before him was that all the operating expenses, except those included under the head of "conducting transportation" should be divided between interstate and intrastate business in proportion to their volume, but that the expenses included under the head of conducting transportation were twice as great for intra as for all business.

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In applying his finding he failed to give intra business credit for its extra unit revenue, and for that reason fell into the common error which runs through all the cases. He found "conducting transportation" was 30.25% of the revenue on the Great Northern road.

He also found the average operating per cent in the State on the Great Northern was 60.82%.

He considered that the 30.25%, being the percentage of revenue consumed in the cost of "conducting tarnsportation" was included in the operating per cent, but in order to double it, it should be added again.

He found the reduction in intra rates made by the State was 13.00%. He then added all of these percentages together.

Average cost of operation in State	60.82%
Extra cost, local	30.25%
Reduction by State	13.00%
	104.07%

Omitting to credit intra business with its intra unit revenue, and assuming that the unit revenue on inter and intra was the same, the above process showed that it would take 104.07% of the revenue to pay operating expenses on intra business.

The intra ton mile revenue in North Dakota, was, very likely, as it is in other states, twice the inter ton mile revenue, so that 100% of the inter ton mile revenue might not be more than 50% of the intra ton mile revenue.

Without further discussing the incorrectness of Judge Amidon's conclusion, we desire to especially emphasize the fact that he found the extra cost intra was confined to haulage items, and that as to those items the intra business cost was twice as much as all
529 business. As "conducting transportation" in that state comprised just about one-half of the total operating cost, the effect of his finding was to double one-half the inter cost and divide the residue of the operating cost between inter and intra equally, per ton mile. This agrees, in result, with Judge McPherson's finding in Missouri, that the intrastate cost is 50% more than inter.

Judge McPherson also failed to give intra business credit for its greater ton mile revenue, but charged it with the greater ton mile cost. The Master's decision here is the first decision in which the extra intra ton mile revenue is recognized. It is not the first case in which the intra ton mile revenue was shown to be greater than inter ton mile revenue. It appeared clearly in the Missouri cases, but was overlooked by the Court. Ton mile revenue for intra is greater everywhere, because of the relative average shortness of the haul, and the higher rates per ton mile which short haul business always commands, in every schedule. In ton miles produced over short hauls the element of weight predominates, and in ton miles produced over long hauls the element of distance predominates. Twenty-five tons carried 1,000 miles makes 25,000 ton miles. It takes 2,500 tons carried ten miles to make 25,000 ton miles. The miles are a hundred times greater in the first instance, and the tons are a hundred times greater in the second. The greater revenue producing ability of the ton miles wherein the weight is the predominating factor is that while rates per hundredweight increase with the distance, the increase is not fixed in proportion to the distance.

The rate for a haul of any given weight for ten miles is very much more than one-tenth of the rate for a haul of the same weight for one hundred miles. A given number of ton miles produced under any proper schedule of rates, will show very much less revenue where the haul is long than where the haul is short. The
530 most profitable business per ton mile is that in which the weight instead of the distance predominates in making the ton miles.

The Master found in these cases, in accordance with the undisputed evidence, that the intra ton mile revenue was greater than the inter ton mile revenue; if, therefore, the relative cost of doing the intra business was no greater in this State than in North Dakota or Missouri, it conclusively appeared that the rates involved were more remunerative than the interstate rates. On the subject of relative cost, the Master rejected the testimony of the State's expert, taken from the company's books, and considered only the testimony of the railroad witnesses. Their evidence was mere opinions, not founded

on any fixed basis of accounting or mathematics, ranging widely between maximum and minimum limits.

The Master evidently did not consider himself bound by the adjudications of other courts above referred to. Unless the extra ton mile cost in this State for intra was found to be even greater than it was found to be in other states to absorb this extra ton mile revenue, the defendants were entitled to judgment in their favor.

The Master found the relative cost here to be greater than it was ever found to be anywhere.

In the Missouri cases, there was much evidence of the same tenor and by the same witnesses who testified here, as to the relative cost of the service. Mr. Elliott and Mr. Gray of the Northern Pacific and Messrs. Doddridge and McPherson all testified there substantially as they did here, Mr. Elliott even going to the extent,—as he did here,—of saying that he was not comparing inter and intra business, but was comparing through and local business.

Two witnesses testified for the State in Missouri on the same subject, the expert accountants employed by the State claiming that there could be no extra cost for intra business outside of
531 train movement items, and that the relative excess confined to those items was less than 50% per ton miles. On all of this testimony, Judge McPherson found that the extra cost of intra freight was 50%. This, so far as the extra burden on intra business is concerned, was equivalent to holding that the cost was 2 to 1 on haulage items. It can't be said that Judge McPherson showed any disposition to be unfair to the railroads, and no doubt his finding established as high a ratio of excess cost for intra business as he felt the evidence warranted. His language was:

"The expense of doing the state business over interstate is greater for carrying freight by at least fifty per centum, and at least twenty-five per cent for carrying passengers."

The Arkansas and Oklahoma cases where the relative cost was fixed at 2 to 1, were each submitted on affidavits, and no doubt the decisions were in accordance with the testimony there before the Court. No distinction was made in the latter cases between haulage and non-haulage cost.

If it is true that this matter of relative cost of doing inter and intra business is the one subject in the business world as to which the modern method of cost accounting is impotent and mathematical deductions—approximately accurate, like the division of income and cost between states—are impossible, it must at least be true that the courts are not going to treat the relative cost as an uncertain element, with no limits as to its variability, to be arbitrarily found and differently applied in each case according to the number of expert witnesses that may be called to express opinions upon it.

The relative cost of doing the inter and intra business is necessarily stable and subject to but little change in the same state, or in different states, from year to year. To say that the disparity in cost is greater in Minnesota than in North Dakota is absurd; that it is greater in Minnesota than in Missouri is unlikely.

532 The finding made in these cases was not made on different or more satisfactory testimony, because, as before stated, the witnesses were largely the same here and in Missouri, and in the North Dakota case the railroad testimony was uncontradicted.

In these cases there was placed before the court the most complete analysis of all the differences in the relative costs referred to, and from the data taken from the companies' records an absolutely concrete mathematical calculation was produced showing the relative cost of through and local business, and by a process of equating, the relative cost of inter and intra, showing the extra cost as applied to all expenses, to be less in the Northern Pacific case than 1.50 to 1 and in the Great Northern case a little more.

In these cases there is not a word of testimony that would justify a finding of any extra cost, except as to haulage items. Mr. Johnson, Assistant Controller of the Northern Pacific, whose statement as to relative costs is the fullest and clearest, carefully limited his testimony to train movement items only.

His testimony on this subject appears at page 4119, et seq., of the Northern Pacific Record. He had said in his affidavit on the preliminary hearing:

"In the opinion of this affiant, the cost of hauling freight, included in the classes of business local to the state, exclusive of all other service, is about two and one-half times as much as the cost of hauling through freight, in through trains."

When on the stand as a witness he was asked whether he still believed the statememnt in his affidavit was true. He said:

A. Yes, sir; hauling, I want to emphasize the word hauling; it does not speak of all operating expenses.

Q. No, it speaks of hauling?

A. Yes, sir.

Q. With that exception, the statement contained in your affidavit is true?

A. Yes, sir; that it costs at least 2½ times for the haul."

533 When asked whether there was any reason why the apportionment of the other operating expenses, outside the haulage or train movement cost, between inter and intra, should not be charged in proportion to volume, he answered (P. 4120).

"In making the investigation we never went beyond the cost of the haul. * * * I think that in the merchandise hearing before the Commission, Mr. Gray, the Comptroller of the Northern Pacific, stated, that he didn't make any attempt to go beyond that point; that the other factors were such as to leave the question a very open one, as to what should be charged and what should not be charged, and what the proper basis should be."

It appears from the language used, that Mr. Johnson was comparing through and local business, not inter and intra business as distinct classes. The same thing is true of the testimony of Mr. Hill and Mr. Elliott. But Johnson was clear and emphatic as to the part of the service in which the extra cost arose.

The language employed in Johnson's affidavit, upon which the above cross examination was based, is a fair sample of the ingenious

phraseology employed by railroad counsel and witnesses throughout on this subject. The cost of hauling "through freight on through trains" was made the standard of comparison. Mr. Johnson is made to say that,

"The cost of hauling freight included in the classes of business local to the state, exclusive of all other service, is about two and one-half times as much as the cost of hauling through freight on through trains."

This is not a comparison of the cost of intra and inter business. "The classes of business local to the state" are exactly the same in general character, as the interstate business.

The agricultural products of the State are nearly all marketable in our cities, and the commerce between the manufacturers and merchants of the Twin Cities and (Duluth and the smaller cities
534 and rural communities of the State is not different in character from the commerce between the people of this State and the cities of St. Louis, Chicago and New York. The peculiar language quoted, therefore, was used not to indicate any peculiarity in the character of the merchandise hauled, but to distinguish the kind of service. The complaint alleges that there is no difference in character between their intra and inter business. There are but two kinds of trains used in hauling freight, and, as respects the haul, but two classes of freight. The companies run through trains extending generally without stop between terminii of divisions, and local trains, stopping at all intermediate stations to deliver and take on business. Business carried on through trains is, as to haulage cost, carried at the least expense, and that carried on local trains is, as to haulage cost, necessarily more expensive. There is no "long haul" local train service and no "short haul" through train service.

The local business, that is the business carried on local trains, is frequently called short haul, and the through is called long haul business. If the terms long haul and short haul were to be used as meaning anything different from through and local, it would be necessary to have some criterion based on length of haul, by which to distinguish them. If mere length of haul was to be considered, it would be necessary to designate some distance at which business would cease to be short haul and become long haul, otherwise there would be hopeless confusion. But mere distance is not what determines the unit cost of the haul. The unit cost depends on the kind of service. The companies classify their business as they receive it according to the service it is to receive, and that classification and service is what determines the unit cost of the haul.

All freight received by a railroad company at its terminals, or at any divisional point, is sorted into two classes regardless of whether it is inter or intra. That destined for points at or beyond
535 the next division terminal is set over into one class for transportation on a through train, and that destined for points within the terminii of the division is set over into a class to be forwarded on a local train. This sorting is constantly going on, it is repeated at every divisional point as to both car load and less than car load lots. Business that goes on a through train over one or more

divisions and is not destined for a divisional point, changes trains, and is carried on the last division from the division terminus to its destination, on a local train. Such a shipment is through business, or "long haul," so far as it is carried on a through train, and is "local business" or short haul so far as it is carried on a local train. The companies thus make the natural classification, and there is no room for any other. The local train service as to haulage is more expensive than the through train service, and in determining the cost of doing any class of business, the question always is, which service did it receive? The cost of hauling freight on a through train over two divisions of say 250 miles in the aggregate, is necessarily less per ton mile than the cost of hauling freight on a local train say 10 miles. In the particular instance the cost per ton mile for the shorter haul might be three or four times as much as the cost per ton mile for the longer haul. But all that is taken care of in the rate schedules. 100 tons hauled 250 miles would make 25,000 ton miles. If we take the actual weight of the shipment and apply to it the first class merchandise rate of the schedule in controversy, for a 250 mile haul, it will give a revenue for the service of $1,102.40. If we take 25,000 ton miles produced over a haul of 10 miles, and apply to this weight the rate in the schedule in controversy for the ten mile distance, we get a revenue on the 25,000 ton miles of $6,490.00.

For the same number of ton miles in this instance, the short haul would produce a revenue per ton mile nearly six times as great as that produced on the long haul.

536 Therefore, when the railroad witnesses wander from the classification of their freight business into through and local which, is in truth and fact, the long haul and short haul business, and undertake in their testimony to speak of the "long haul" and "short haul" business in the abstract, they can keep within the bounds of truth and yet make their evidence very deceptive, by comparing the extremely short haul local train business with business carried on through trains. The disparity in cost per ton mile may be considerable, but the disparity in ton mile revenue is equally great or greater, because all schedules provide a greater unit revenue for short hauls. All schedules are so made in recognition of the fact that for short haul distances the unit cost is greater. The railroad witnesses always forget to mention the greater ton mile revenue for the short haul.

There is little traffic over distances of ten miles to produce revenue or incur cost, and as distance increases the tendency is towards a leveling of both the unit cost and the unit revenue. The extreme comparisons, therefore, made by the railroad witnesses mean nothing. There never can be, however, a complete leveling of the unit cost and unit revenue of local business as compared with through business. The differences are actual, inherent and permanent, and the intelligent consideration of the question of relative cost requires a determination of the relative volume of inter and intra business that receives the more expensive service on local trains, and the less expensive service on through trains.

On this subject, in those cases there is no contradiction of the

testimony of Mr. Hillman, which shows (Hillman Ex. G-5, G. N. case) that much less than one-half of the business handled on local trains is intrastate. More than sixty per cent of local train business both carload and l. c. l. is interstate. In ton miles about one-tenth of the interstate business receives the more expensive local
537 train service, but in volume of traffic—actual tons—about one-fourth is so carried. The interstate tons carried on local trains, as compared with intrastate so carried, are about 3 to 1, while the relation of inter to intra ton miles is about 2½ to 1.

Investigations made in Missouri, by taking for comparison all the business done for different fixed periods on different roads doing business in that State, testified to by the railroad witnesses Doddridge and Peabody in the Missouri rate cases, fully uphold Hillman's deductions as to the relative volume of inter and intra carried on local and through trains here. That is why Hillman's testimony on the subject was not contradicted.

The importance of this aspect to the question arises from the fact that local train service is the only factor of extra cost that can be attributed to intra business in order to claim that, as a class, it is more expensive than the inter.

So far as "two terminal charges" are concerned, they are very adequately taken care of in the terminal allowance in the rates in controversy.

When it appears, therefore, as it does here, that the extra cost of local train service, instead of being all charged to intrastate business, must be charged between the two classes more nearly in the relation of three parts to interstate, and one part to intrastate, it very materially affects the question of the relative cost of doing the business. The other fact which affects the question directly is the proportion of intrastate business which receives the less expensive through train service.

This large volume of interstate business receiving the local train service, raises the cost of doing interstate business considerably above the cost of through train business, and the part of the intrastate business handled on through trains reduces the average cost of intrastate business below the cost of local train service, so that when we compare the two classes as a whole the cost gap between them is very much narrowed.

538 In the face of this situation the statement made by the Master at page 129 of his findings that:

"By far the greater volume of state business belongs to the more expensive short haul class:"

is no justification of his finding as to relative cost. The statement is only a half truth because it does not suggest that a very much greater volume of the interstate business (though a less proportion of the whole) belongs to the same class, and that, therefore, interstate business, as a class, must be charged with the greater part of the extra cost. The Master's statement carries an implication that the extra cost of local train service should be mainly charged to the intra business because so great a proportion of it belongs to the class which receives that service, and that no considerable part of such extra cost

is chargeable to interstate business. Common sense, as well as the testimony of all the witnesses in these cases, proves that it is the character of the service, and not the character of the shipment—as inter and intra—that determines the cost; and it follows that each class should be charged with its share of the extra cost, in proportion to the relative quantities of each receiving the more costly service.

Mr. Elliott and other witnesses showed that extending the length of a through haul over more than one division does not lessen the ton mile cost. Mr. Elliott said, that circumstances being equal, the cost per ton mile of hauling a given quantity of freight would be duplicated on every division over which it passed.

To call attention to the relative length of haul on inter and intra business means nothing, unless it is accompanied by a statement as to how much of the distance it received the less expensive, or the more expensive, service. All business carried on through trains (unless it originates at or is destined for a division terminus) receives both kinds of service. It is either hauled from an intermedi-
539 ate station to a division terminal, and there taken onto a through train and carried by that service as far as possible; or having been carried as far as possible on a through train it is set out at the end of the division nearest to its destination, and there picked up by a local train and carried to its destination at some intermediate station.

It may have local service at both ends of its trip, and most "through" business must have local service at one end or the other. The class of business which, for the entire length of its haul, gets through train service is necessarily very small. When we talk about through business, therefore, we simply mean all business while carried on through trains, and not that there is a considerable class of business which gets exclusively through service.

It appears from the testimony of all witnesses on both sides, that the greater cost of handling short haul or "local train" business arises solely out of the difference in the character of the haul—the greater time taken, the greater amount of fuel and lubricants consumed, and the greater amount of work in handling the business on the part of train crews and station employees, and the numerous items grouped by all the roads under the grand division of operating expenses known as transportation expenses. Outside of those items there can be no extra cost in handling the business which receives local train service.

The "haul" is invariably given by witnesses as the cause of the extra cost. The "short haul" business is what is claimed to be more expensive. It is clear therefore, that whatever the extra cost is, it applies only to the haul or to the cost of conducting transportation, and does not apply to the other grand divisions of operating expenses, which have no relation to the haul.

The Master's finding that the excess cost intra per ton mile is 1.50%—not limited to haulage charges but applied to all oper-
540 ating expenses—makes the amount of extra expense wrongfully charged to intra business very large. For example, on the Northern Pacific for 1908 the "transportation expenses" (79—

Elliott) are 58% of the total operating expenses. If the excess ton mile cost for intra, found by the Master were limited, as it should be to this part of the operating expenses, it would mean that 42% of the total freight expense should be apportioned between the two classes in proportion to their volume, as held in Judge Amidon's decision, and that 58% of the expenses should be apportioned per ton mile on the relation of 2.5 to 1. This would make the relation of all intra expenses to all inter expenses per ton mile as 1.87 to 1, considerably higher than the excess charged to intra in North Dakota and Missouri, and much higher than the excess cost found by Hillman.

On the Great Northern for 1908, the freight "Transportation Expenses" (47—Martin) were 48% of the total operating expenses, so that 52% of the expenses should be apportioned equally per ton mile, and 48% of the expenses should be apportioned on the basis of 2.5 to 1. On the basis of all expenses the relation would be 1.62 to 1.

If the amount of extra cost put upon the intra business by the Master's finding here was confined to the haulage charges alone in which it occurs it would amount substantially to a finding that the intra ton mile haulage charges are five times the inter ton mile haulage charges.

The difference in the cost found by the Master is made a fixed percentage of inter cost, regardless of the differences in the unit revenue per ton mile, the average unit cost, or the inter unit cost obtained by equating the ton miles; and regardless also of the proportion of the operating expenses incurred in conducting transportation. These differences necessarily affect the relation, and they are very marked between the Great Northern and the Northern Pacific. On the
541 Great Northern only 48% of the operating expenses were incurred in 1908 in transportation cost, while on the Northern Pacific the percentage was 58.

On the Great Northern the unit revenue intra (53—Ward) was ..... .01381 cents.
On the Northern Pacific (80—Elliott) it was..... .01191 cents.
On the Great Northern the inter unit revenue, 1908 was ..... .00661 cents.
On the Northern Pacific it was..... .00827 cents.

In the face of all these differences the relative cost of intra and inter business was, according to the Master, exactly the same.

Defendants also object and except to the finding that the cost of handling intrastate passengers is 15%, or any other per cent greater than the cost of handling interstate passengers.

VII.

Defendants object and except to the finding of the Master that the rates, and each of them, as applied to each of the roads involved, are confiscatory, for the reasons:

1. That upon a fair and reasonable valuation of the property of each company in the State, and a fair and reasonable division of the value of such property between freight and passenger business, and

between the inter and intra business, would show that said rates, and each of them, would be entirely compensatory as to each of the roads involved.

2. As to the Northern Pacific Company, because the complaint in said action does not claim confiscation, except so far as the rates here involved affect interstate rates.

3. Because the complaints in each of the actions declare that at the time the rates involved were prescribed, the interstate rates of the company in Minnesota were fair and reasonable, and
542 the evidence in this case shows as to the freight business that the net intra ton mile revenue is greater than the net inter ton mile revenue.

VIII.

Defendants object and except to the finding of the Master that the dividends received by the Great Northern and Northern Pacific Companies from the Express Companies owned by each of said railroad companies respectively, and for which said railroad companies perform all of the said transportation, should not be reported as income.

Attached hereto is a more particularized and specific specification of the exceptions of defendants to the various findings contained in the Master's report.

We object and except to the matters in said report particularly stated, as well as to others not so particularly pointed out, as follows:

In Subdivision V, Relating to Interference with Interstate Commerce.

1. On page 16 of the Report, the findings that "the reductions in rates which may be charged by railroad companies for intrastate transportation within the State of Minnesota so made by its legislature and commission and challenged by these suits, are briefly as follows:

"Reduction in rates on general merchandise amounting to from 20 per cent to 25 per cent. (Commission's order of September 6, 1906.)

"Reduction in rates on grain, lumber, live stock and coal amounting to 7.37 per cent. (Session Laws of 1907, Chap. 232.)"

should be modified as follows: It should be made clear also that the reduction in rates there specified was a reduction in the maximum rates, which might be charged for the particular merchandise,
543 commodities or passengers, and not the percentage of reduction in the general revenue of the road received for business in Minnesota, nor the percentage of reduction in revenue received from the aggregate of the particular merchandise, passengers or commodities transported, and to which the rates apply.

2. On page 21 of the Report, the Finding or Statement of Opinion that "It must be true that there cannot be a dual control in so important a regulation as the fixing of rates, the same being of vital

importance to the continued existence of the Company as a going concern."

3. The Finding or Statement, on page 23 of the Report, in No. 2, that "The State claims that the above section of the Federal Act referred to does not prohibit discrimination brought about in conducting state commerce because of the proviso appended to the first section of the act, as follows: 'Provided, however, that the provision of this act shall not apply to the transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state and not shipped to or from a foreign country or to any state or territory, as aforesaid.'" There should be added to this Finding—"Also because it is beyond the power of Congress under the Constitution of the United States to legislate as to or to regulate or prohibit the making of rates by a State as to transportation beginning and ending and wholly within the State."

4. The Finding or Statement of Opinion, on page 30 of the Report, in No. 4, that "It always has been and is impracticable, and apparently is impossible, to operate the property of either of said companies situate in any State separately or to carry on transportation of passengers or freight local to a State separately from interstate passengers or freight touching that State." The evidence does not justify this.

544 5. The Finding, on page 31 of the Report, in No. 5, that "By far the larger proportion of the business of each of said companies is interstate; and by far the larger proportion of the business of each of said companies within the State of Minnesota is interstate." This Finding should be modified by showing the ton miles of freight local to the State for that year and the ton miles of interstate freight touching the State during that year and the passenger miles inter and intrastate within the State for the year.

6. The Finding or Statement of Opinion, on page 31 of the Report, in No. 6, that "For many years the conditions attending the transportation of passengers, of merchandise covered by the Order of September 6, 1906, or of the commodities covered by Chap. 232, Gen. Laws 1907, have been and they still are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota, North Dakota and South Dakota reached by the lines of railway operated by either of said companies; and whether such transportation has been or is of business local to a State, or interstate between any two of such states. (See Baird's testimony, N. P. Case, pp. 1436 to 1439, and pp. 1476-7; and Maguire's testimony, G. N. Case, pp. 792 to 795.)" The evidence in the case does not justify this.

7. The Finding or Statement of Opinion, on pages 31 and 32 of the Report, in No. 6, that "Each of said companies had, prior to the taking effect of the Order of September 6, 1906, and the two-cents maximum passenger fare law, maintained an equitable, that is, a relatively fair basis of rates for merchandise and passengers the transportation of which touched Minnesota without regard to whether the transportation was state or interstate between Minnesota and an adjoining State, and each of them still maintains such equable basis

of rates for the transportation of commodities covered by Chap. 232, Gen. Laws 1907, regardless of whether it is local within
545 Minnesota or interstate between Minnesota and an adjoining State." The evidence in the case does not justify this.

8. The Finding or Statement of Opinion, on page 32 of the Report, in No. 6, that "Any substantial change in the basis of rates or in any particular rates due only to the fact that the transportation was interstate or that it was local to a State would have been actual, undue and unjust discrimination in fact; and any substantial difference in rates for the transportation of passengers, merchandise or commodities maintained by either of said companies as between traffic local to the State of Minnesota and traffic which goes between the State of Minnesota and either of its neighboring states will constitute actual, undue and unjust discrimination in fact. (See N. P. Case, Elliott, p. 1320-1, and Baird, p. 2198-9.)" The evidence in the case does not justify this.

9. The Finding or Statement of Opinion, on page 32 of the Report, in No. 6, with reference to Superior, Wisconsin, and Duluth, Minnesota, that "Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates."

10. The Finding or Statement of Opinion, on pages 32 and 33 of the Report, in No. 7, with reference to the cities of Grand Forks, North Dakota, and East Grand Forks, Minnesota, Fargo, North Dakota, and Moorhead, Minnesota, and Wahpeton, North Dakota, and Breckenridge, Minnesota, that "Any substantial difference in rates as between the cities composing each pair would seriously damage if not wholly destroy the commerce of the city given the higher rate and would be an undue and unjust disadvantage in fact to it and an undue and unjust preference and advantage in fact for its neighboring city." The evidence does not justify this.

11. The Finding or Statement of Opinion, on page 33 of the Report, in No. 7, that "Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and
546 points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the Company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the Company's property in Superior." The evidence does not justify this.

12. The Finding or Statement of Opinion, on pages 33 and 34 of the Report, in No. 8, that "If these companies after the installation of the rates prescribed by the order for transportation within Minnesota had continued to maintain the former rates for transportation between Minnesota and adjoining states, the result would have been serious discrimination against localities in the neighboring states."

13. The Finding or Statement of Opinion, on pages 34 and 35 of the Report, in No. 9, that "These reductions were compelled by the necessary and direct effect of the operation of the order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth; Fargo, Grand Forks and Wahpeton could not have competed with Moorhead, East Grand Forks and Brecken-

ridge, respectively, nor could Superior have transacted business successfully with Fargo, Grand Forks or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the Order between these localities." The evidence does not justify this.

14. The Finding or Statement of Opinion, on page 38 of the Report, in No. 10, that "Maintaining rates, comparison of which shows this result, involves substantial, undue and unjust discrimination in fact against the interstate localities."

15. The Finding or Statement of Opinion, on page 38 of the Report, in No. 11, that "Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of
547 the locals based on the state line would have involved undue and unjust discrimination in fact." The evidence does not justify this.

16. The Finding or Statement of Opinion, on page 40 of the Report, in No. 12, that "Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time, necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the State carried on over the same rails and under the same conditions and involves necessarily undue and unjust discrimination in fact against localities westerly of the Minnesota-North Dakota boundary line." The evidence does not justify this.

17. The Finding or Statement of Opinion, on page 41 of the Report, in No. 13, that "The Northern Pacific Company cannot maintain its present commission-made rates between its eastern terminals and Moorhead and at the same time its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations." The evidence does not justify this.

18. The Finding or Statement of Opinion, on page 42 of the Report, in No. 14, that "Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities easterly and southerly of Minnesota, and an unjust and undue preference and advantage in fact for St. Paul." The evidence does not justify this.

548 19. The Finding or Statement of Opinion, on page 43 of the Report, in No. 15, that "The proof is clear that conditions attending transportation are substantially the same in Minnesota and North Dakota and whether the transportation is local to either State or interstate between them. If unjust and undue prefer-

ence or advantage is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern companies have, prior to the taking effect of the Order, maintained an equitable basis of rates in the territory which these two states compose without regard to state lines"—also the Finding in this connection, that "The interstate rates from Minnesota westerly into North Dakota have been the same as for Moorhead easterly into Minnesota, and no conditions have existed, or do exist, which justify a different basis of rates for east bound than for west bound transportation." The evidence does not justify this.

20. The Finding or Statement of Opinion, on page 44 of the Report, in No. 15, that "This disparity of rates for transportation under substantially similar conditions and which disparity increases as distance easterly from Moorhead increases, constitutes an undue preference and advantage to the eastwardly localities in Minnesota and a corresponding prejudice and disadvantage to the interstate westwardly localities in North Dakota." This is not justified by the evidence.

21. The Finding or Statement of Opinion, on page 44 of the Report, in No. 16, that "Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in face." This is not justified by the evidence.

22. The Finding or Statement of Opinion, on page 46 of the Report, in No. 17, that "It is apparent that unless undue and unjust discrimination shall exist in the rates on one of these interstate lines as compared with the other, the same basis of making the rate, the same relation between rates for different distances and dif-
549 ferent classes must be maintained on one line as on the other, and that notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the State of South Dakota the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached and that break was made within the State of Minnesota." This is not justified by the evidence.

23. The Finding or Statement of Opinion, on page 46 of the Report, in No. 17, that "The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the State of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates."

24. The Finding or Statement of Opinion, on page 47 of the Report, in No. 18, that "Substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists and constitutes undue and unjust discrimination in fact."

25. The Finding or Statement of Opinion, on page 48 of the Report, in No. 19, that "Whether discrimination in fact exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and if not the same, undue and unjust discrimination

in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls and for the same distance westerly of St. Cloud." The evidence does not justify this.

26. The Finding or Statement of Opinion, on page 48 of the Report, in No. 19, that "Such disparity depends only on the fact that in the case of the higher rates the state boundary line is
550 crossed and on no other condition whatsoever, and it constitutes undue and unjust discrimination in fact not only against the shipper at Fergus Falls, but as well against the consumer in the North Dakota towns in question." This is not justified by the evidence.

27. The Finding or Statement of Opinion, on pages 49 and 50 of the Report, in No. 20, that "Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota or Minnesota or whether it finds its termination at one of the Minnesota terminals of the companies or at Superior, Wisconsin.

"Conditions attending transportation are substantially the same as to all these commodities moving westwardly whether the shipment originates at a Minnesota point or at Superior, Wisconsin, or whether it finds its destination in Minnesota or North Dakota.

"Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal whether the shipment originates at Duluth, Minnesota, or at Superior, Wisconsin, and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for transportation of lumber whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportation of live stock whether the shipment originates in Minnesota, North Dakota or eastern Montana involves an undue and unjust prejudice and disadvantage in fact against the localities subject to the higher basis of rates and an undue and unjust preference and advantage in fact to the localities given the lower basis." The evidence does not justify this.

551 28. The Finding or Statement of Opinion, on pages 50 and 51 of the Report, in No. 20, that "Establishing the rates prescribed by Chapter 232, Gen. Laws 1907, and maintaining these rates for transportation wholly within Minnesota simultaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana would involve on the part of the Northern Pacific and Great Northern companies undue and unjust discrimination in fact against shippers, receivers and localities transacting the interstate business and would seriously impair the interstate business of the carriers. If the companies shall be compelled to maintain within Minnesota the rates prescribed by Chapter 232, they will be compelled to reduce the basis of their in-

terstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota and Minnesota points and Superior to a substantial parity with the basis prescribed by Chapter 232 in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business as well as in order to protect the interstate business of carriers against serious impairment." This is not justified by the evidence.

29. The Finding or Statement of Opinion, on pages 51 and 52 of the Report, in No. 21, that "If the rates on coal prescribed by Chapter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by Chapter 232,
552 from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by Chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed unless rates shall be similarly reduced from these various distributing centers to localities in these two districts." This is not justified by the evidence.

30. The Finding on page 53 of the Report, in No. 24, that "Prior to the taking effect of Chapter 97, Gen. Laws 1907, the general basis of rates for the transportation of passengers between any two points on the Northern Pacific System had been for some years three cents for passengers of twelve years of age and over and one and a half cents per mile for passengers under twelve years of age." The evidence does not justify this Finding.

Three cents per passenger mile for passengers of twelve years of age and over and one and a half cents per passenger mile for passengers under twelve years of age had been the maximum charge in Minnesota, but there were many passengers carried at lower rates and the average rate per passenger mile was much less.

31. The Finding or Statement of Opinion, on page 54 of the Report, in No. 24, that "These facts compel the conclusion that the necessary, immediate, direct effect of the operation of Chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead."

32. The Finding or Statement of Opinion, on page 54 of the Report, in No. 25, that "Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the company, one of which should cover the mileage in Minnesota, discrimination in fact against the
553 interstate passenger through Moorhead on the Northern Pacific still existed and was practiced. It existed against a passenger who, applying for a through ticket, did not know that the sum of the locals on Moorhead was less than the through rate, against the passenger with a trunk which he could not check through unless

on a through ticket, against a passenger who was compelled to use a sleeping car." This Finding is not justified by the evidence.

33. The Finding or Statement of Opinion, on page 55 of the Report, in No. 25, that "The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile of the mileage in North Dakota. And the rates newly established by the Northern Pacific Company jointly with other companies for passenger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota." This is not justified by the evidence.

34. The Finding or Statement of Opinion, on page 55 of the Report, in No. 25, that "These reductions in rates were compelled by the necessary, immediate and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the companies might transact interstate passenger business freely and without impairment of volume."

35. The Finding or Statement of Opinion, on pages 55, 56 of the Report, in No. 26.

36. The Finding or Statement of Opinion, on pages 56 and 57 of the Report, in No. 27.

554 37. The Finding or Statement of Opinion, on page 57 of the Report, in No. 28.

38. The Finding or Statement of Opinion, on pages 57, 58 and 59 of the Report, in No. 29, down to and including the second paragraph.

39. The Finding or Statement of Opinion, on pages 60 and 61 of the Report, in No. 29, that "The facts as found establish conclusively that the State in the rates prescribed by it is not kept within the limitations imposed upon it and has exceeded its constitutional powers in that such rates constitute a direct interference with and impose a burden upon interstate commerce and effect unjust discrimination as between interstate localities."

In Subdivision VI, Relating to Valuation.

40. The Conclusion or Opinion, stated on page 62 of the Report, that "It also appears from this and subsequent cases that it is the present value of the property which is to be taken as a basis of rates."

41. On page 64 of the Report, after having stated that what may have gone into the construction and completion of the Roads would not take into consideration the changed condition of the country since the original construction, its growth and prosperity, then the Conclusion, ruling "*in which the companies are entitled to share

* * * and by reason of changed conditions and lapse of time it has little weight in arriving at the present values."

42. On page 65 of the Report, the Conclusion or Ruling with reference to the case of Missouri, Kansas & Texas Railway Company vs. Love, et al., that "Wherever applicable, it must control the Master in determining the questions here raised."

43. The Conclusion or Ruling of the Master that the revenue of the railroads other than that derived from the properties used
555 for the benefit of the public are not to be considered, which is expressed on pages 65 and 66 of the Report as follows: "In the light of this decision and others therein referred to and approved, our first duty is to ascertain the fair value of the property devoted to the public service.

"To this end a large volume of testimony was produced before the Master on behalf of Complainants and the State, respectively, as to the reproduction cost of such property, and by such property is included only that which is used for the benefit of the public and which, with the revenue directly or indirectly derived from such use, is alone to be considered in determining the question of a reasonable rate. Other revenues and other properties the company may have, but as to them the public has no concern."

In Subdivision VII, Relating to Real Estate Values.

44. To the Finding upon pages 67 and 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Northern Pacific is $21,024,562.90. The value should have been found at not exceeding $9,498,099.27 (see Defendants' Exhibit OO—Morgan, Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said exhibit, and the cross examination of the witnesses referred to in the said Report as having made appraisals on behalf of Complainants). If the cost of reproduction is to be the basis for valuation, not only should the values of the property as given by Mr. Morgan be the extreme limit of the values to be taken, but the addition of 5 per cent to the appraisal of the St. Paul and the Minneapolis properties for cost of acquisition and consequential damages and of 25 per cent to the appraisement of Duluth property for railway value, cost of acquisition and consequential damages is arbitrary and improper, and not warranted either in law or in fact. The valuation found by the Master also includes the value of lands not in use for railroad purposes at the present time.

556 45. To the Finding on page 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Great Northern is $25,172,630.80. The value should have been found at not exceeding $7,493,250.41 (see Defendants' Exhibit C—Morgan, State's Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said Exhibit and the cross examination of the witnesses referred to in the said report at this point as having made appraisements on behalf of Complainants). The same reasons given in support of the objection No. 44 apply equally to this.

46. To the Finding on page 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Minneapolis & St. Louis Road is $5,999,397.90. The value should have been found at not exceeding $1,872,522.04 (see Defendants' Exhibit K—Morgan, Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said Exhibit and the cross examination of the witnesses referred to in the said report at this point, as having made appraisements on behalf of Complainants). The reasons given in support of objection 44 apply here.

47. The Master made no deductions from valuations for street crossings or parts of streets used for right of way held under rights acquired from the city authorities without acquisition of the fee as is made clear in the Report, on page 74, at which point he states he has made no deduction therefor, and says: "For railroad purposes these rights are substantially as valuable as if held under absolute title. They are permanent in character and in case of reproduction would cost practically as much as private property."

48. The Master found the values of right of way, etc., outside of the terminals, by taking 75 per cent of the valuations as fixed by complainants' witnesses as the fair reproduction value of such property of the Northern Pacific and Great Northern railways as
557 appears from the statement on page 75 of the Report—"Upon careful consideration of the evidence and all the circumstances thereby disclosed bearing on the question, 75 per cent of the valuations as fixed by complainants' witnesses has been determined upon as the fair reproduction value of the property in the Northern Pacific and Great Northern cases."

This method is arbitrary, is not based upon any evidence and includes much which is not proper to be included in the valuation.

49. The Finding on page 75 of the Report, that the value of the grading, clearing and grubbing in the Northern Pacific case is $12,331,541.52. It should have been found as not exceeding $7,695,858.70 (see Defendants' Exhibit OO—Morgan, Estimate B, his testimony explaining the valuation there given, and the cross examination of the Complainants' witness Darling with reference to grading, clearing and grubbing).

50. The Finding on page 75 of the Report, that the value of the grading, clearing and grubbing in the Great Northern case is $21,685,802. It should have been found at not more than $16,531,191.24 (see Defendants' Exhibit C—Morgan, Estimate B, also testimony of the witness Morgan, with reference to said valuation and the cross examination of the Complainants' witness Hogeland in relation thereto.)

51. The Finding on page 76 of the Report, that the value of the grading, clearing and grubbing in the Minneapolis & St. Louis Road is $2,551,690. It should have been found as not more than $1,867,784.66 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation and the cross examination of Complainants' witnesses relative thereto).

52. The Finding on page 76 of the Report, that the value of the protection work, rip rap and retaining walls in the Great Northern

Company is $850,069. It should have been found at not
558 more than $522,498.25 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said valuation and the cross examination of Complainants' witness Hogeland relative thereto).

53. The Finding on page 77 of the Report, that the value of the protection work, rip rap and retaining walls of the Minneapolis & St. Louis is $52,240. It should have been found as not exceeding $40,370 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation, and the cross examination of Complainants' witness Cutler relative thereto).

54. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Northern Pacific case is $3,657,576.70. It should have been found as not exceeding $1,424,725.95 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said valuation; also the cross examination of Complainants' witness Darling and Complainants' other witnesses relative to the values of cross ties and switch ties).

55. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Great Northern is $5,460,809. It should have been found as not exceeding $2,443,636.30 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said valuation; also the cross examination of Complainants' witness Hogeland, and Complainants' other witnesses relative to the value of cross ties and switch ties).

56. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Minneapolis & St. Louis case is $1,149,829. It should have been found as not exceeding $530,726.56 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his valuation, and the cross examination of Complainants' witness Cutler and Complainants' other witnesses as to the value of cross ties and switch ties).

559 57. The Finding on page 78 of the Report, that the cost of ballast in the Northern Pacific case is $1,960,969. It should have been found as not exceeding $1,266,932.79 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said values and the cross examination of Complainants' witness Darling, and other witnesses who testified as to cost of ballast and amount thereof).

58. The Finding on page 79 of the Report, that the value of the ballast in the Great Northern case is $3,861,360. It should have been found as not exceeding $2,870,472.43 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said values and the cross examination of Complainants' witness Hogeland, and other witnesses who testified as to value of ballast and amount thereof).

59. The Finding on page 79 of the Report, that the value of the rails in the Northern Pacific case is $5,645,307.73. It should have been found as not exceeding $3,552,777.93 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining his said valuation, and the testimony of Complainants' witness Darling

as to the valuation and amount of rails in Northern Pacific Road given in his direct and cross examination).

60. The Finding on page 79 of the Report, that the value of the rails of the Great Northern Railway is $9,053,977. It should have been found as not exceeding $6,693,565.02 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation and the testimony of the witness Hogeland on direct and cross examination in the Northern Pacific case as to value of rails, and testimony of the Complainants' witness Hogeland on cross examination as to cost and amount of rails).

61. The Finding on page 80 of the Report, that the value of the rails in the Minneapolis & St. Louis case is $1,540,392. It
560 should have been found as not exceeding $1,226,638.94 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his said valuation and the cross examination of Complainants' witness Cutler, as to rails and the testimony, direct and on cross examination, in the Northern Pacific case, of witness Darling).

62. The Finding on page 80 of the Report, that the track fastenings in the Northern Pacific Case were of the value of $727,228.37. It should have been found as not exceeding $473,183.14 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Darling as to track fastenings).

63. The Finding on page 80 of the Report, that the value of the track fastenings in the Great Northern Case were of the value of $2,087,615. It should have been found as not exceeding $1,493,-344.07 (see Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Hogeland, as to track fastenings).

64. The Finding on page 80 of the Report that the value of track fastenings in the Minneapolis & St. Louis Road is $258,561. It should have been found as not exceeding $198,337.55 (see Defendants' Exhibit K—Morgan, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Cutler, as to track fastenings).

65. The Finding on page 80 of the Report, that the value of the switches, frogs and railroad crossings in the Northern Pacific road is $303,717.80. The value should have been found as not exceeding $176,889.59 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Darling, relative thereto).

66. The Finding on page 80 of the Report, that the value of the switches, frogs and railroad crossings in the Great Northern
561 case is $300,519. The amount should have been found as not exceeding $199,146.11 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Hogeland, and other witnesses).

67. The Finding on page 81 of the Report, that the value of the switches, frogs and railroad crossings in the Minneapolis & St. Louis case is $66,807. The amount should have been found as not ex-

ceeding $42,073.48 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Cutler).

68. The Finding on page 81 of the Report that the value of the track laying and surfacing in the Northern Pacific case is $1,600,-591.56. It should have been found as not exceeding $792,636 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said valuation and cross examination of Complainants' witness Darling).

69. The Finding on page 81 of the Report, that the value of the track laying and surfacing in the Great Northern case is of the value of $2,207,753. It should have been found as not exceeding $1,366,615.25 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining said valuation, and testimony on direct and cross of the witness Darling in the Northern Pacific case, and cross examination of Complainants' witness Hogeland).

70. The Finding on page 83 of the Report, that the value of track laying and surfacing in the Minneapolis & St. Louis case is $384,751. It should have been—as not exceeding $251,917.80 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation, and the testimony of the witness Darling, in Northern Pacific case, as to track laying and surfacing, and of other witnesses who testified upon the question).

562 71. The Finding on page 83 of the Report, that the value of the bridges, trestles and culverts in the Northern Pacific case is $3,586,053. The value as found should have been found as not exceeding $1,811,169.31 (see Defendants' Exhibit OO—Morgan, Estimate B, testimony of the witness Morgan explaining his said valuation, and cross examination of the Complainants' witness Darling relative thereto. The value as found by the Master was arbitrarily arrived at and is not justified by the evidence in the case).

72. The Finding on page 84 of the Report, that the value of the bridges, trestles and culverts of the Great Northern case is $6,664,729. The value should have been found as not exceeding $2,950,000 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation, and the testimony as to the value of omitted bridges. The value as found by the Master was arbitrarily arrived at, and is not justified by the evidence in the case).

73. The Finding on page 84 of the Report, that the value of the bridges, trestles and culverts in the Minneapolis & St. Louis case is $1,025,827. It should have been found as not exceeding $640,-465.26 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his said valuation. The value as found by the Master was arbitrarily arrived at, and is not justified by the evidence).

74. The Finding on page 86 of the Report, that the engineering, superintendence and legal expense in the Northern Pacific Case was valued at $2,633,946. It should have been found at not to exceed $1,733,572.30 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony in explanation of the said valuation).

75. The Finding on page 86 of the Report, that the value of engi-

neering, superintendence and legal expense in the Great Northern case was $3,867,040. It should have been found as not ex-
563 ceeding $2,470,383.13 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his valuation).

76. The Finding on page 86 of the Report, that the value of engineering, superintendence and legal expense in the Minneapolis & St. Louis case, is $690,364. It should have been found at not more than $412,034.21 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his valuation).

77. The Finding on page 86 of the Report, that the value of the freight in construction of the Great Northern is $1,700,043. It should have been allowed at not more than $752,547.41 (see Defendants' Exhibit C—Morgan, Estimate B, and the testimony of the witness Morgan, in explanation thereof, and the testimony of the Complainants' witness Darling in the Northern Pacific case, and of other witnesses as to the cost and proper allowance for this item.)

78. The Finding on page 87 of the Report, that there should be allowed for contingencies in the Northern Pacific Case $3,710,479. There should have been allowed not to exceed $2,668,851.89 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining this valuation).

79. The Finding on page 87 of the Report, that there should be allowed for contingencies in the Great Northern case $4,367,826. There should have been allowed not to exceed $3,868,335.38 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining this valuation).

80. The Finding on page 88 of the Report, that there should be allowed in the Northern Pacific case, for interest during construction, $7,386,215. No amount whatever should be allowed, and if any amount is to be allowed it should be upon a lower value than found by the Master.

81. The Finding on page 88 of the Report, that there should be allowed in the Great Northern case for interest during con-
564 struction, $17,880,150. No amount whatever should be allowed, and if any amount is to be allowed, it should be upon a lower value than found by the Master.

82. The Finding on page 88 of the Report, that there should be allowed for the Minneapolis & St. Louis case $1,834,880 for freight on construction material, contingencies and interest during construction. The amount should have been allowed at not exceeding $767,446,41 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining said allowance in his said Exhibit). Interest during construction is not a proper item to be allowed under any circumstances.

83. The Finding on page 88 of the Report, allowing in the Northern Pacific case $2,204,342 for interest in terminal properties. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

84. The Finding on page 89 of the Report, allowing in the Great Northern case $1,186,191 for interest in terminal property. On the

evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

85. The Finding on page 90 of the Report, allowing in the Minneapolis & St. Louis case $1,186,191 for interest in terminal properties. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

86. The Finding on page 92 of the Report, that the value of the physical properties of the Northern Pacific Railroad in Minnesota is $90,204,545. It should have been found as not exceeding $48,-141,074.01 (see Defendants' Exhibit OO—Morgan, Estimate B, and the testimony in support thereof, including cross examination of Complainants' witnesses; and interest during construction should be excluded; also adaptation and solidification, and value of subsidiary properties).

565 87. The Finding on page 94 of the Report, that the value of the physical properties of the Great Northern in Minnesota is $138,425,291. It should have been found as not exceeding $70,-231,714.13 (see Defendants' Exhibit C—Morgan, Estimate B, and the testimony in support thereof, including the cross examination of Complainants' witnesses; and interest during construction should be excluded; also adaptation and solidification and value of subsidiary properties).

88. The Finding on page 96 of the Report, that the value of the physical properties of the Minneapolis & St. Louis is $21,608,464. It should have been found at a value not to exceed $11,083,744 (see Defendants' Exhibit K—Morgan, Estimate B, and the testimony in support thereof, including cross examination of Complainants' witnesses; and interest during construction should be deducted; value of subsidiary properties and adaptation and solidification should be excluded).

In Subdivision VIII, Relating to Depreciation.

89. The Conclusion or Statement of Opinion, on page 98 of the Report, that "In view of all the foregoing considerations it follows without question there should be no deductions on account of depreciation." These defendants assert not only that it does not follow "without question," but also that it does not follow at all, that deductions should not be made on account of depreciation. Deductions should be made on account of depreciation.

In Subdivision IX, Relating to Stocks and Bonds as Affecting Value.

90. The Finding or Ruling on page 99 of the Report—"That value of bonds and stocks is wholly unreliable and cannot be used in these cases as an element in determining the value of operating property, or as a basis for rate making."

566 91. The Finding or Conclusion on page 99 of the Report, that the market value of stocks and bonds of the Minneapolis & St. Louis Road in 1908, $22,600,197, apportioned to Minnesota

on the basis of the proportion of the mileage owned by the Company in Minnesota to its total mileage owned gives a valuation one-fifth less than the value of the property as conceded by the State, i. e., these defendants. The value conceded by the State in round numbers is $11,000,000 only.

In Subdivision X. Relating to Original Cost of Construction.

92. The Finding on page 102 of the Report, that the cost of construction of the Northern Pacific Road is $312,243,555. The amount should be found as not exceeding $251,853,509.50 (see Defendants' Exhibit V—Gray, deducting amounts paid for improvements and betterments out of earnings. Mr. Gray's testimony, Volume 2, pages 648, 649).

93. The Finding on page 104 of the Report of the amount of money put into the construction of the Great Northern Road as $295,401,213. The amount should have been found at not exceeding $246,652,801.13 (Complainants' Exhibits K, K-1, K-7, K-8, K-9).

94. To the Conclusion or Ruling on page 104 of the Report, that "Rates are not to be predicated on original investment."

95. The adoption by the Master as stated by him on page 106 of the Report, of the cost of reproduction new as the basis upon which to predicate rates.

In Subdivision XI, Relating to Public Demand for These Roads.

96. To the Conclusion or Ruling of the Master as to the Minneapolis & St. Louis Railroad, on page 108 of the Report, that "Necessarily to get business its rates must conform to those existing on other roads wherever competition is an element, but when this does
567 not exist it is entitled to rates not so controlled by competition, and within reasonable limits must, to exist, be given a free hand in the conduct of its business."

In Subdivision XII, Economy of Management.

97. The Conclusion or Finding on Page 109 of the Report, that "If the convenience and demands of the public were disregarded greater economy could doubtless be exercised. Full cars and long trains at fewer intervals, would be a great saving of cost and to this end produce could be stored in elevators awaiting shipment under the most economical conditions. Needless to say, that this would result in great public inconvenience and dissatisfaction and recourse to such methods is unthinkable. The carrier must properly yield to public demand and recoup for loss on other portions of its business."

98. The Finding on pages 109 and 110 of the Report, that "It is proper for the carrier not only to provide itself with ample facilities for the sufficient conduct of its present business, but also to anticipate

demands soon to be made as the country becomes more prosperous, and it is entitled to revenue sufficient for such purpose.

"Having these considerations in mind, it does not appear that the service rendered or the property acquired and held for present and prospective needs are unreasonable or excessive, or that any property has been improperly included as a basis of cost of reproduction for rate making purposes."

In Subdivision XIII, Valuations of Entire System.

99. The Finding on page 111 of the Report, that the value of the reproduction of the entire system of the Northern Pacific Railway Company, *as* $452,666,489. It should have been found not to exceed $300,000,000.

568 100. The Finding on page 111 of the Report, that the value of the cost of reproduction of the Great Northern System *as* $457,121,469. It should be found at a sum not exceeding $350,000,000.

In Subdivision XIV, Division of Property Values Between Freight and Passenger Business, Inter and Intra.

101. To the Conclusion or Ruling on page 112 of the Report, in effect, that the passenger rates and the freight rates must each stand or fall by themselves and the value of the property for the purpose of determining the validity of the rates be divided between freight and passenger business, but expressed in the Report as follows:

"It is inequitable that the traveling public largely on pleasure bent should cast any part of the expense it incurs on the freight business which has to do almost altogether with traffic in which the public as a whole is directly interested.

"On the other hand, it has never been claimed that the latter should be relieved at the expense of the former, and the cases all recognize the propriety of separation upon an equable basis as near as may be."

102. The Finding or Conclusion or Ruling, on page 113 of the Report, that "Of course, any division of property value between the two classes of business, freight and passenger, must be an approximation, but one made on the relation of gross revenue derived from each kind of business has been uniformly accepted as the fairest all things considered in all rate cases heretofore judicially determined. * * * The revenue basis is not ideal, but it has an element of certainty possessed by no other and is no more objectionable in other respects." The true basis for a division between freight and passenger would be upon the basis of the use made of the property by each class of business. The railroads could have produced evi-

569 dence showing the use made by each class of business and thus have afforded the best, if not the only, proper basis for a division of value. They did not do so.

103. The division of the values of the property of the Northern

Pacific Railway upon the basis of the gross earnings from freight business in the State and passenger business in the State, as set forth in the Report at page 114. The true division should be made upon the basis of the use for freight business and passenger business. But if we concede that the division must be made upon the basis of gross earnings because the evidence affords no basis upon which to divide upon the basis of use, yet the value so divided is far in excess of what it should be, as appears from objections hereinbefore set out.

104. The apportionment of the value of the Northern Pacific property theretofore assigned by the Master to freight business and passenger business between the intra and interstate business on the gross earnings basis, as appears on pages 114 and 115 of the Report. The division should be made upon the basis of use.

Exhibit 80—Elliott shows the intrastate ton miles and the interstate ton miles for the year, from which it can be computed that the intrastate ton miles did not exceed 12 per cent of the total ton miles for the State. 12 per cent of the value of the property used for intrastate freight business upon the basis of the Master's Finding of total value, would be $7,973,468.40 instead of $10,867,837 as found by the Master. It also shows that it was used to produce 52,317,320 intrastate passenger miles, 100,930,180 interstate passenger miles or 34.2 per cent for intrastate.

105. The summary of apportionment of values to different classes of business in Minnesota in the Northern Pacific case, as set forth on page 116 of the Report for reasons which are fully apparent from objections hereinbefore set out.

570 106. The division of the total value of the Great Northern properties in Minnesota between freight business and passenger business on gross earnings basis as set forth on pages 116 and 117 of the Report, for the reason that the best, if not the only, true basis for making such division is that of the use made of the property in each class of business, and the Railroad Company could have furnished evidence as to that use in such way as to enable a proper division to be made upon that basis. But, inasmuch as it did not do so, if the division is to be made upon the basis of gross earnings, the value of the whole property, as found by the Master, is excessive, as appears from objections heretofore set out.

107. The apportionment of the value of the Great Northern property theretofore assigned by the Master to freight business and passenger business between the intra and interstate business on the gross earnings basis, as appears on page 117 of the Report. The division should be made upon the basis of use.

Complainants' Exhibit 53—Ward shows the ton miles intrastate and the ton miles interstate from which it appears that in the intrastate freight business, the use of the property was 8 per cent of the use for the entire freight business of the State, i. e., 8 per cent of the total ton miles were intrastate. The value assigned to the total freight business of the State by the Master is excessive, as appears from objections heretofore set out, but upon that valuation the amount to be charged to the intrastate freight business would be $8,704,182.32 instead of $16,442,200, as found by the Master. Com-

plainants' Exhibit 53—Ward also gives the intrastate passenger miles and interstate passenger miles, from which it may be computed that substantially 50 per cent thereof is used for intrastate passengers. Upon the basis of the valuation found by the Master for Minnesota passenger business this would increase the value
571 assigned by him in his Findings to intrastate passenger business, but upon a proper valuation the value would be much less than that assigned by the Master.

108. The Summary of apportionment of total value to different classes of business for the Great Northern Road, as shown on page 118 of the Report. The particular reasons of the objection to this summary are specified in particular objections heretofore set out.

In Subdivision XV, Reasonable Return.

109. The Finding, Conclusion or Ruling on pages 119 and 120 of the Report, that "It follows therefore that such valuation is as much an element of rate making and is entitled to the same consideration as the operating expenses of the Company. The theory that it is entitled to some return, the amount thereof to be adjusted by the Legislature regardless of property values devoted to the public service, must be rejected. Any rate which will not produce a full and fair return is unreasonable and is confiscatory to the extent that it comes short of producing such return and is a taking of property from the carrier class and giving it to the persons served without compensation."

110. The Finding, Conclusion or Ruling on page 122 of the Report, that "Under the conditions disclosed in this case the companies are entitled to a net return of 7 per cent upon the value of their property as herein found."

In Subdivision XVI, as to Net Revenue.

111. The Finding or Determination on page 126 of the Report, that "The method of division of common cost between the freight and passenger business made by the Northern Pacific Company and the Great Northern Company with respect to traffic on their respective roads most nearly approximates an accurate result,"
572 and the adoption thereof by the Master for the purpose of division in the Northern Pacific and Great Northern cases.

In Subdivision XVII, as to Net Return of Property Valuations Assigned to Intrastate Business.

112. The Finding on page 133 of the Report, that "The weight of testimony that the cost per ton mile of doing state freight business is at least two and a half times as much as is such cost in doing interstate freight business in Minnesota, and the testimony would sustain, if it does not compel, a finding that such relative cost is as three to one. He also finds from the evidence that the cost per passenger-

mile in the state passenger business is at least 15 per cent greater than such cost in the interstate passenger business in Minnesota." The Master should have found that the cost of doing intrastate freight business per ton mile, in the Northern Pacific case, does not exceed 1.5 times the cost per ton mile for intrastate freight, (testimony of the witness Johnson Volume 7, pages 4111 to 4121; testimony of witness Hillman, Volume 6, pages 3301 to 3313, 3317 to 3322, 3401 to 3405; also 4154, and Exhibits 3-M—Hillman, Tables 6, 7 and 9 when re-stated, as required by the testimony of Mr. Hillman at Volume 7, page 4154); and in the Great Northern case does not exceed 1.7 times per ton mile cost of inter for intrastate freight (Defendants' Exhibit G-7—Hillman, Complainants' Exhibit 53—Ward); and for the Minneapolis & St. Louis that it costs more per ton mile for interstate freight than it does for intrastate freight (Defendants' Exhibit L—Hillman, Defendants' Exhibit M—Hillman, Defendants' Exhibit L—Hillman, Table 5); and the relation of cost of passenger business is for Northern Pacific intra 1.1119 times inter passenger mile (Defendants' Exhibit 3-M—Hillman, Table 13); for Great Northern for intra 1.0513 times the cost inter passenger
573 mile (Defendant' Exhibit G—Hillman, Table 4, Complainants' Exhibit 53—Ward).

113. The division, in the Northern Pacific case, of the miscellaneous freight and passenger earnings between inter and intrastate business made by the Master on pages 134 and 135 of the Report, the same being made upon the basis of transportation revenue. The evidence does not disclose any basis for a division thereof, except as it may have been assigned by the defendant railroad company. The defendant railroad company in its report to the State has assigned these miscellaneous earnings as between inter and intra, giving a much larger portion thereof to the intrastate business than the Master gives in his Report. The defendants are entitled to have the intrastate business credited with the amounts of miscellaneous earnings so reported to the State by the railroad companies, and also its share of income not from operation. (Defendants' Exhibit 3-V—Hillman.)

114. To the division made by the Master, of operating expenses between freight and passenger business, on page 136 of the Report, assigning $5,343,718.25 freight and $2,311,631.95 to passenger. The division should be made upon the same basis or in the same proportion as Defendants' Exhibit 3-M—Hillman, Table 4, Column 5.

115. The division made by the Master, in the Northern Pacific case, of the total freight operating expense between intrastate and interstate freight on page 139 of the Report, wherein he shows $1,355,273.82 to intrastate and the remainder to interstate. The total amount so divided is less than it should be, because an excessive amount was assigned to passenger business, as appears from objections hereinbefore set out, and it is divided upon the basis of too great an excess of cost for intra over interstate freight.

116. The division made in the Northern Pacific case, of operating expense between intrastate passenger and interstate passenger, on

page 140 of the Report. The amount of the total expense so
574 divided is in excess of what it should be, as appears from objections hereinbefore set forth, and too great an excess cost over interstate is assigned to intrastate business.

117. The Finding of the Master on pages 144 and 145 of the Report that the various statements introduced in evidence by the defendants to show that the net Minnesota interstate freight and the Minnesota interstate passenger incomes in the business of the fiscal year ending June 30, 1907, failed to show that the rates complained of were not confiscatory. The evidence does not justify this and it is for the Complainants to prove that the rates are confiscatory, and not for defendants to disprove it.

118. The division of the earnings and operating expenses in the Great Northern case as made on pages 145, 146, 147, 148, 149, of the Report in the following respects: It does not include or give the intrastate business its share of the general income of the road not from operation.

It divides the miscellaneous freight and passenger earnings between intrastate and interstate business upon the basis of transportation revenue; whereas, the evidence affords no basis for such division, and the railroad, in its report to the State, specifically assigned the greater part of these earnings as between intrastate and interstate business, and the defendants are entitled to the benefit of the division thereof so made by the railroads.

In the division of operating expenses between freight and passenger, an excessive portion thereof is assigned to passenger.

In dividing the freight operating expense between intrastate and interstate freight too great an excess cost of intrastate freight per ton mile over interstate freight per ton mile, and of cost intra passenger mile over interstate passenger mile is assigned to intrastate
575 business. The total amount of freight operating expense assigned between interstate and intrastate is excessive, as appears from objections above made.

119. The sum of $92,645.87 allowed by the Master, on page 151 of the Report for outside operations to be divided between intrastate passenger business and interstate passenger business on the passenger earnings basis, is insufficient. The amount should have been not less than $132,700 (Exhibit I—Hillman).

120. The net intrastate freight income found by the Master as stated on page 134 of the Report at $898,997.81 is too small. The net intrastate freight income should have been found to be not less than $1,150,916.99.

121. The Finding or Conclusion of the Master on page 157 thereof. "As hereinbefore stated, the results obtained by the employment of his (Mr. Hillman's) methods of division of operating expenses are found not to be correct, fair or just."

122. The Finding set forth on page 158 of the Report, that the total value of the property of the Minneapolis & St. Louis Company used for the year ending June 30, 1907, in the conduct of its business in Minnesota is $21,608,464. The amount should have been found as not in excess of $11,083,744.12.

123. The Finding, Conclusion or Ruling on page 158 of the Report, that "Such total value may be fairly and justly apportioned between the freight business and the passenger business on the gross earnings basis—that is assigned to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both. The value so apportioned to the freight and passenger business may in similar manner be justly and fairly divided on the gross earnings basis between the intrastate business and the interstate business of each." The division should be made
576 upon the basis of use. The railroad company had in its possession evidence of what that use was, though it did not see fit to give it to the Master.

124. The summary of the apportionment of total value to different classes of business in Minnesota for the Minneapolis & St. Louis Road given on page 159 of the Report. The total value of the property is excessive, as set out in objection No. 123. The apportionment of the value between freight and passenger business upon a gross earnings basis is not made upon the right principle, and therefore incorrect. The assignment of 22.61 per cent of the total value apportioned to the freight business is excessive. The assignment should be made upon the basis of the ton miles intra as compared with the total ton miles. This would assign to intrastate freight business 13.727 per cent of the total value of the property apportioned to the freight business (see Defendants' Exhibit L—Hillman, Table No. 5). The apportionment of 14.80 per cent of value found for the entire passenger business to intrastate passenger business is made upon the wrong basis. It should be made upon the basis of passenger miles.

125. The Finding, or Statement of Opinion, on page 160 of the Report, that the amounts there stated as claimed by the defendants for the net income of freight and passenger business intrastate on the Minneapolis & St. Louis are in excess of the net income from all sources derived from the businesses over and above operating expenses and taxes; and that the method employed by the defendants for ascertaining the amount of operating expenses was not correct, fair or just and resulted in assigning to each of such class of business an amount less than was in fact expended by the company in the conduct thereof.

126. The Finding on page 160 of the Report, that the total net earnings of the Minneapolis & St. Louis Company in Minne-
577 sota for the year 1907 from all sources which involved the use of property included in the valuation, was $895,977.66. The amount was much larger.

127. The Finding set forth on pages 159 and 161 of the Report as to the Minneapolis & St. Louis Road, that "The cost of conducting each class of the intrastate business covered by the rates complained of is greater in proportion to the revenue derived from each such class of business than was the cost of conducting the corresponding class of interstate business of said company in said year in said State and the amount of net income derived from each such class of intrastate business is less than sufficient to yield an annual return of 4.14 per

cent upon the proportion of the value of the whole property which was used in the conduct of each such class of business and which is properly chargeable thereto."

128. The Finding of the net earnings of the Minneapolis & St. Louis Road for the years 1903 to 1900, inclusive, for the system and for the State of Minnesota, as set forth in the Report on page 161 thereof. They are too little.

129. The Finding or Statement of Opinion on page 162 of the Report that "If the merchandise rates complained of had been in effect during the year ending June 30, 1907, the Minnesota intrastate revenue of the Minneapolis & St. Louis Company derived from the business covered by such rates would have been reduced $33,367.30, more than 19½ per cent of the revenue derived from such business."

130. The Finding or Statement of Opinion on pages 162 and 163 of the Report, that "on the volume of the business of the passenger service rendered by the Minneapolis & St. Louis Company within the State of Minnesota for the year ending June 30, 1906, the losses in revenue which would have resulted had the two cent pas-
578 senger law complained of been in effect, are intrastate passenger business in Minnesota $72,453., interstate passenger business in Minnesota $74,371."

131. The Finding or Statement of Opinion on pages 163 and 164 of the Report, in which the Master states the amount of loss in revenue which would have been suffered by the Minneapolis & St. Louis Road in the year 1906 if the Commodity Rates Act had been in effect. The amount stated is excessive.

132. The statements of the revenue of Minneapolis & St. Louis Company for June 30, 1907, and the division and apportionment of the miscellaneous revenue and to the division of the operating expenses between freight and passenger and between inter and intrastate freight business, and the statement of the net intrastate income freight and passenger, and the assignment or division of the value of the property between inter and intra (see pages 165 to 168 of the Report). The same reasons for objection exist as hereinbefore stated in objections to the like divisions and apportionments in cases of the Northern Pacific and Great Northern Railways.

133. The Finding or Statement of Opinion on page 168 of the Report, that "Dividing the freight operating expense and the passenger operating expense in Minnesota between intrastate business and the interstate business, respectively, on the straight revenue basis, does not assign to either class of such intrastate business the full amount of operating expenses which was actually expended in the conduct thereof, and that consequently the rates of return on value * * * are in excess of the actual returns, respectively, which would have been earned if the rates complained of had been in effect during the whole of such fiscal year."

134. The Finding or Conclusion on pages 168 and 169 of the Report, that "It appears from the foregoing facts, and the Master finds that for the two years next prior to July 1, 1908, in
579 these three cases the revenue derived by the said defendant railway companies and each of them from the property

thereof devoted to the public use in the operation of their respective lines of railway and the conduct of their business as common carriers of passenger and freight within and local to the State of Minnesota, were and that they still are inadequate and insufficient compensation for the property so used and the service rendered, and that the aforesaid rates prescribed by the Orders of the Railroad and Warehouse Commission and the Acts of the Legislature were and still are unreasonably low, unjust and confiscatory, and, in the immediate future and until there shall be very material changes in existing conditions not likely soon to occur, they will continue so to be, and that the enforcement of said orders and acts should be enjoined and restrained, as well because they are unreasonably low and confiscatory as because they constitute a burden upon and an interference with and a regulation of interstate commerce, as has been hereinbefore found and determined."

In Subdivision XVIII, Express Company Revenue.

135. The Finding or Conclusion on pages 169 to 171 to the effect that dividends received by the Northern Pacific Company and the Great Northern Company from their express business done through express companies owned and controlled by them is not to be included in their operating revenue, nor taken into account in determining the validity of the rates complained of.

580 *Decree.*

136. To each of the proposed decrees in that the decrees recommended to be entered should be decrees dismissing the Bills of Complaint.

GEORGE T. SIMPSON,
Attorney General.
EDWARD T. YOUNG,
EDMUND S. DURMENT,
Solicitors for Defendants.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled. Certain of the requests for further findings have been complied with, as will appear by the Master's Report to be filed in Court with the Clerk thereof in said several actions. The requests not complied with are found to be not material or relevant.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

NOTE.—Original Exceptions and Master's Rulings are filed in the Northern Pacific Case, only one copy having been served on the Master.

581 Circuit Court of the United States, District of Minnesota (Third Division).

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Minnesota Rate Cases.

Now come the defendants Charles F. Staples, Ira B. Mills, Charles E. Elmquist and George T. Simpson, and respectfully ask that the findings of the Master, as contained in his report, be amended in the following particulars:

582

I.

Amend first paragraph of tenth subdivision, at page 98, by showing face value of the stocks and bonds of the company, as well as their alleged average market value for a period of five years.

Complied with. C. E. Otis, Special Master.

II.

Amend paragraph on page 99 relating to the capitalization of the Great Northern Railway so as to show that at the time of the commencement of the action (Complt. par. VIII) the total outstanding capitalization of the Great Northern was

Stock	$149,577,500.00
Bonds	83,119,939.00
Total capitalization	$232,697,439.00

Complied with. C. E. Otis, Special Master.

That on June 30th, 1908, the date of the appraisement by the company, the outstanding capitalization (page 45 Annual Report 1959) was:

Stock	$209,962,750.00
Bonds	97,955,939.39
Total capitalization	$307,918,689.39

It does not appear that any of the additional capitalization issued since suit was commenced was used in the acquisition of additional properties in Minnesota.

Amend also the reference on page 102 to the Great Northern so as to read as follows:

"In the Great Northern case the balance sheet of the company of date June 30th, 1908, shows the book value of the railroad and its equipment for the entire system, devoted to the public service to

amount to the sum of $291,414,415.34 (road $240,349,771.44; equipment, $51,064,648.90)."

Refused. C. E. Otis, Special Master.

583 An examination of the company's books and vouchers by the State's accountant (Exhibit "K"—Hillman, 1 to 7), shows the book cost of the road to June 30th, 1908, the same as above, $291,414,415.34, but also shows various items in the account which the State claims are fictitious or excess items, which should be deducted from the gross book cost in order to show the actual cost of the road. The principal item claimed to be fictitious is an arbitrary increase in the valuation of the property, and the capitalization in 1879, when the company's immediate predecessor, the Saint Paul, Minneapolis & Manitoba Company took over the properties from its predecessor the Saint Paul and Pacific Co. Mr. Hillman was unable to determine from the books whether the excess valuation of the property at that time was $12,126,342.19—which he claims is the minimum, or $21,347,040.70, which he claims is the maximum. No explanation of this transaction was offered by the company.

All subsequent items of alleged excess cost shown by the books are grouped by Hillman on Exhibit "K"—7 under two heads marked "A" and "B"; the only difference being that in the "A" group, the first item above is used as the claimed excess, and added to all subsequent items, while in the "B" group the second above item is used as the claimed excess.

Subtracting $48,243,614.21, the sum of the items constituting Hillman's estimate "A"—being the lesser of the two—it leaves the total book cost of the road and equipment as claimed by the State, $243,170,801.00. (Vol. 3, part 2, page 1855).

The reasons for the claim of the State appear on the Exhibits (Hillman "K" 1 to 7), and in Mr. Hillman's testimony, (Vol. 3, part 2, pages 1764 to 1910, Record).

The total track mileage of the road's entire system is 8,528.98, and of the part in Minnesota, 2,779.30, so that practically 32.6 per cent is in Minnesota. Taking this per cent of the above cost, gives $79,273,681 as the amount which the State claims was actu-

584 ally expended in construction and equipment of the road in Minnesota.

Mr. Drew, the Comptroller of the Great Northern offered explanations of some of the items claimed to be excess by Mr. Hillman. His testimony commences at page 1910, Vol. 3, part 2, of the Record. Some of the alleged excess items were not explained by the company.

Amend the findings in reference to the division of the value of the property between intra and interstate freight and intra and interstate passengers so as to show the relation, in the case of the freight, of the intra and inter ton miles in the State, and as to the passenger, the relation of the intra and inter passenger miles.

Respectfully submitted, GEORGE T. SIMPSON,
Attorney General.

EDWARD T. YOUNG,
EDMUND S. DURMENT,
Of Counsel.

Refused. C. E. Otis, Special Master.

585 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

WILLIAM SHILLABER, Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Master's Supplementary Report to the Court.

586 To the Honorable the Judges of the Circuit Court:

Now comes Charles E. Otis, Special Master in each of the above entitled suits, and makes this his Supplemental Report and files the same with his original Master's Report to the Court with the Clerk thereof in said several suits.

Said Original Report herewith filed (save as modified and corrected as hereinafter stated) was completed and personally served

by copy on counsel of the respective parties at St. Paul, Minnesota, on the 21st day of September, 1910, and within 30 days after such service the counsel for the Complainants and the counsel for the answering Defendants severally served on the Master their respective exceptions to the said Report, all as provided in the order appointing the undersigned Special Master in said causes.

Counsel expressly waived argument of such exceptions before the Master. Thereupon the Master forthwith gave such exceptions and the subject-matter thereof careful consideration, and becoming satisfied that all of the matters covered by them had been fully considered by him in making up his Report so served, the Master overruled the said exceptions and each and every of them. Said exceptions and the Master's rulings thereon appended thereto are herewith filed.

At the request of counsel for the answering Defendants the Master has made some further findings. He has also made correction of some clerical errors found to exist in said Report so served on counsel. Said further findings and corrections do not substantially modify, change or affect any of the conclusions of the Master as set out in his Report so served. Such corrections and further findings, and where and how made, fully appear in the original manuscript of such Report, which will be filed herewith in the Northern Pacific case. The printed reports so to be filed in said several suits
587 are intended and are supposed to be exact reprints of the said amended Master's Report so in manuscript save that they have all been signed by the Master in his own hand.

All of which is respectfully submitted.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

588 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 21ST, 1910.

Monday morning.—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Hon. Charles A. Willard, U. S. District Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors, Respectively, of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Before Judge Sanborn.

This day come the parties to these causes by their respective solicitors, Messrs. How, Butler & Mitchell and Mr. Hale Holden appearing on behalf of the complainants, Mr. C. W. Bunn appearing on behalf of the Northern Pacific Railway Company, Mr. E. T. Young and Mr. Edward S. Durment appearing on behalf of the Attorney General and Railroad and Warehouse Commission, and the said causes having been heretofore set down for hearing at this time and place, upon the exceptions of the complainants and defendants to the Special Master in Chancery's Report herein, the same now coming on,

589 Mr. Jared How opens and argues said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. C. W. Bunn argues said exceptions on behalf of the Northern Pacific Railway Company.

Mr. Hale Holden argues further upon said exceptions on behalf of the complainants.

And the argument of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and concluded until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

590 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 22ND, 1910.

Tuesday morning.—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes and the further trial thereof is resumed and proceeded with as follows—

Mr. Hale Holden resumes his argument upon said exceptions on behalf of the complainants.

Mr. Pierce Butler argues further upon said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon said exceptions on behalf of the complainants.

591 Mr. E. T. Young argues said exceptions on behalf of the defendant Attorney General.

And the hearing of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,

Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

592 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 23RD, 1910.

Wednesday morning.—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes and the further trial thereof is resumed and proceeded with as follows—

Mr. Edward T. Young argues said exceptions to the Court upon behalf of the Attorney General.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward T. Young resumes his argument upon said exceptions on behalf of the Attorney General.

Mr. Edmund S. Durment argues said exceptions on behalf of the Railroad and Warehouse Commission.

And the hearing of said causes not being concluded at the
593 hour of said adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Friday morning next at ten o'clock.

Ordered: That this Court do now adjourn until Friday morning next at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

594 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 25TH, 1910.

Friday morning.—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors, and the further trial thereof is resumed and proceeded with as follows, viz:

Mr. Edward S. Durment argues upon said exceptions on behalf of the Railroad and Warehouse Commission.

Mr. Pierce Butler argues upon said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon said exceptions on behalf of complainants.

595 Mr. Hale Holden argues further upon said exceptions on behalf of the complainants.

And the argument of said causes not being concluded at the hour of adjournment, it is by the Court Ordered that further proceedings herein be and the same hereby are postponed and concluded until tomorrow morning at ten o'clock.

Ordered: That this court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

596 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 26TH, 1910.

Saturday morning.—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors of the Will of John S. Kennedy, Deceased, and Henry F. Dimock
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further argument thereof is resumed and proceeded with as follows:

Mr. Hale Holden argues in conclusion upon said exceptions on behalf of the complainants.

Mr. Pierce Butler argues in conclusion on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

597 Mr. Jared How argues in conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties, said causes are duly submitted to and by the Court taken under advisement.

Ordered: That this Court do now adjourn until Monday morning next at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

598 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Application and Order to Show Cause on the therein-named How, Butler and Mitchell, attorneys for the complainants therein named by handing to and leaving a true and correct copy thereof with Pierce Butler, a member of the above named firm of How, Butler & Mitchell personally at St. Paul, in said District on the 14th day of November A. D. 1910.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy*.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Application and Order to Show Cause on the therein-named E. T. Young and E. S. Durment attorneys for the defendants therein named by handing to and leaving a true and correct copy thereof with each of the above named E. T. Young and E. S. Durment personally at St. Paul in said District on the 14th day of November A. D. 1910.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy*.

599 United States—Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

EMMA B. KENNEDY and Others, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

Consolidated.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON and Others, Defendants.

Application for Allowance of Master's Compensation.

To the Honorable the Judges of said Court:

Now comes Chas. E. Otis, Special Master in Chancery in the above causes and respectfully represents.

By an order of this Court of date and entered May 4th, 1908 your petitioner was appointed Special Master in the above and six other like causes to take and report the testimony and recommend to the Court judgments to be entered therein. Of the nine cases so referred, by arrangement of Counsel the above three were taken
600 up and proceeded with, the remaining six to remain in abeyance until the first mentioned cases shall have been finally determined. In the three causes so selected for hearing the Master has made his final report to the Court and completed his labor therein, and now respectfully requests the Court to fix the compensation he shall receive for services so rendered by him and which in brief have been substantially as follows:

1. The Master prepared, took and filed his oath of office in each of said causes so referred to him, conferred with counsel of the respective parties as to course of procedure and order of testimony therein and prepared and served summons on all the counsel for the purpose of initiating the work, resulting in a hearing and order that the taking of testimony should be first begun in the Northern Pacific Case and the time and place therefor was definitely fixed. A week's time of the Master was taken up with this preliminary work.

2. Pursuant to arrangements so made the taking of testimony in the Northern Pacific Case was commenced on the 4th day of June, 1908 and was diligently proceeded with from day to day and from time to time until all testimony special to that case had been taken, ending on the 25th day of January, 1910. The Master was actually engaged for ninety-nine days in the taking of testimony in this cause. The testimony so taken exclusive of exhibits comprises 4528 typewritten pages. There were 168 exhibits, exclusive of many sub-tables and Public Records.

3. Later and on August 4th, 1908, when there was a temporary suspension of proceedings in the Northern Pacific Case, and taking of testimony was commenced in the Minneapolis and St. Louis case and was in like manner proceeded with and finally closed on the 31st day of May, 1910. The Master was actually engaged for thirty-
one days in the taking of testimony in this cause. The tes-
601 timony so taken comprises, exclusive of Exhibits 1350 type-
written pages. There were 49 Exhibits exclusive of many sub-tables and Public Records.

4. The taking of testimony in the Great Northern Case was commenced before the Master on the 15th day of March, 1909, and was in like manner proceeded with and concluded on the 27th day of January 1910. The Master was actually engaged for forty-two days in the taking of testimony in this cause. The testimony so taken, exclusive of Exhibits comprises 2148 typewritten pages. There were seventy-eoght Exhibits exclusive of many sub-tables and Public Records.

5. It was stipulated by counsel that the evidence submitted in any one of the cases so far as relevant and material to the issue in any of the other cases, should be received and considered as evidence in each case.

6. When the taking of testimony was finally concluded, by request of counsel the causes weree set down for oral argument before the Master and seventeen days was spent by him in listening to the arguments orally presented. Such oral arguments were taken down by the of-icial stenographer, at counsel's requesr and were by them revised and submitted to the Master and consisted of nearly 1500 typewritten pages. Arguments before the Master were concluded on the 29th day of July, 1910.

In addition to such oral arguments the respective counsel prepared and submitted to the Master four several printed briefs, amounting in the aggregate to 1163 pages, all of which, as well as the oral arguments and the transcription thereof, received the careful consideration of the Master.

7. From the time the Master was advised that his appointment was under consideration, which was the latter part of April, 1908, until his report was finally completed and submitted to the Court on October 29th, 1910, the Master devoted substantially his whole time and attention to the cases so referred, and in the performance of the
duties so by the Court imposed upon him in connection there-
602 with. He at all times presided and supervised and directed the taking of testimony. At intervals when for convenience

of counsel, and to enable them to prepare for further examination and cross-examination, the taking of testimony was suspended, the Master himself was engaged in carefully reviewing the testimony as transcribed by the stenographer and the Exhibits submitted in connection therewith, causing corrections therein to be made as was from time to time required so that they should conform to the proceedings taken before the Master. He was further engaged in familiarizing himself with the testimony and with decisions and precedents bearing upon the many and difficult questions which the causes presented to the end that he might be prepared to return a full and just report as speedily as practicable after final submission. He at all times held himself ready to proceed at the request and convenience of counsel with the work before the Master, and as far — was practicable and consistent with its importance, strove to speed the trial and ultimate decision of the causes so submitted, and there has never been at any time any delay on his account, nor was any engagement or other matter personal to himself ever permitted to interfere with his duties and labors as Master. In this matter substantially his whole time for a period of two and one-half years has been by him devoted to his work.

In view of the foregoing matters and the great national and commercial importance of the questions submitted and the burden of responsibility so imposed upon the Master, he is of the opinion that his services in the three cases have been and are reasonably worth the sum of Twenty-five thousand dollars of which he has heretofore been paid and received the sum of seven thousand five hundred dollars; and he suggests that the compensation as fixed be apportioned as an expense in the three cases as may be agreed upon by counsel or determined by the Court to be just and equitable.

Counsel of the several parties have all been advised of the
603 claim here made by the Master and the amount thereof, and, as the Master is informed, desire that the matter be left to the judgment and discretion of the Court without a hearing thereon.

All of which is respectfully submitted.

Dated, St. Paul, Minn., Nov. 10th, 1910.

CHAS. E. OTIS,
Special Master.

On reading the foregoing application, and upon consideration it is ordered, that the parties to the suits specified in the caption to the foregoing application, show cause before the United States Circuit Court for the District of Minnesota, Third Division, at the Federal Building in St. Paul, Minnesota, on the 17th day of November, 1910, at 10 o'clock in the forenoon, why the foregoin- application should not be granted, and why the compensation fixed therein should not be apportioned equally between the cases against the Northern Pacific Railway Company, et al., The Great Northern Railway Company, et al., and the Minneapolis & St. Louis Railroad Company et al.

Let a copy of the application and of this order be served upon Messrs. How, Butler & Mitchell, attorneys for the complainants, and

Messrs. E. T. Young and E. S. Durment, attorneys for the defendants with all convenient speed.

WALTER H. SANBORN,
U. S. Circuit Judge.

Dated November 12, 1910.
St. Paul, Minnesota.

(Endorsed:) Application of Special Master for Compensation. Filed Nov. 28, 1910. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

604 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

Consolidated.

DAVID C. SHEPARD, Complainant,
vs.
GEORGE T. SIMPSON, IRA B. MILLS, CHARLES F. STAPLES, and CHARLES E. ELMQUIST, and Companion Cases, Defendants.

In the Matter of the Application of the Master in the Above-entitled Action to Have His Fees for Services Therein Fixed by the Court.

The Undersigned, representing the State of Minnesota, which is the actual defendant in the above entitled action, and representing also formally the state officers who are named as defendants therein, hereby protest against the allowance of the claim made by the Master for a fee of Twenty-five Thousand (25,000) Dollars for his services in said cases.

We respectfully represent on behalf of our said clients, and the State, that the Master's claim is excessive, and out of all fair proportion to the value of his services.

This litigation in reporter's fees, the fees of expert witnesses, and in the printing of the enormous record has already incurred an expense which almost makes this class of litigation prohibitory. Whatever becomes of the cases ultimately, the costs are going to be a very heavy burden, and, therefore, no allowance should be made
605 for merely constructive services. The length of time consumed in trying these cases makes the employment of the Master different from a mere temporary service. The hearing of the cases did not take all of his time since the trials began, and compensation for that period in excess of that allowed by law for the same period to a judge of the court, seems clearly excessive. The fixing of the Master's fees rests in the sound discretion of the court. The court is familiar with the character and extent of the work

performed, and we desire only to ask the court to allow no more than reasonable compensation for the services rendered.

Respectfully submitted,

GEORGE T. SIMPSON,
Attorney General of Minnesota.

EDWARD T. YOUNG,
Of Counsel.

(Endorsed:) Objections of Att'y Gen'l Simpson to Master's fees. Filed Nov. 28, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

606 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

EMMA B. KENNEDY and Others, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

The application of Honorable Charles E. Otis, Special Master in Chancery, in cases above entitled, for the determination and allowance of his compensation for his services therein, came on to be heard upon return of the order to show cause attached thereto. The attorneys for the complainants appeared but made no objection to the allowance of the fee. No one of the other parties, or of their attorneys, objected to its allowance, except that the written objection of Honorable George T. Simpson, and his counsel Edward T. Young, filed herewith, was submitted.

The Court is aware of the learning, ability and patience that were required to fitly consider and decide the questions of law and of fact which these cases present, and is familiar with the burden of
607 labor, care and responsibility the special master has borne, and after an examination of his report and of the printed volumes of the evidence, he personally heard, and upon reflection

It is ordered, that the compensation of the master for his services in these cases be, and the same is hereby fixed at the sum of Twenty-five thousand dollars ($25,000.00), and this amount is allowed therefor.

It is further ordered, that this amount be distributed so that ten thousand dollars ($10,000.00) thereof be allowed and paid in the cases against the Northern Pacific Railway Company, and others ten thousand dollars ($10,000.00) in the case against the Great Northern Railway Company, and others, and five thousand dollars ($5,000.00) in the case against the Minneapolis & St. Louis Railroad Company, and others.

It is further ordered, that the respective railway companies above mentioned forthwith pay their respective shares of the unpaid balance of the compensation hereby allowed, and that the amounts thus paid abide the result of the suits and be taxed as costs and recovered, as may be directed by the subsequent orders or decrees of this Court.

WALTER H. SANBORN,
U. D. Circuit Judge.

St. Paul, Minnesota, November 28, 1910.

(Endorsed:) Order allowing Special Master's fees at $25,000.00. Filed Nov. 28, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

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SHEPARD
v.
NORTHERN PAC. RY. Co. et al.

KENNEDY et al.
v.
GREAT NORTHERN RY. Co. et al.

JAMES
v.
SAME.

SHILLABER
v.
MINNEAPOLIS & ST. L. R. Co. et al.

(Circuit Court, D. Minnesota, Third Division, April 8, 1911.)

(*Syllabus by the Court.*)

1. Constitution—Commercial Clause—Carriers—State Rates Violative of Commercial Clause:

The acts of the Legislature of Minnesota of April 4, 1907 (Gen. Laws 1907, c. 97 [Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2]), reducing passenger fares within the state about 33⅓ per cent., and of April 18, 1907 (Gen. Laws 1907, c. 232 [Rev. Laws Supp. 1909, §§ 2007—11 to 2007—17]), reducing commodity rates within the state about 7.37 per cent., and the orders of its Railroad and Warehouse Commission of September 6, 1906, reducing general merchandise rates within the state from 20 to 25 per cent., and of May 3, 1907, reduc-

ing in rates within the state to distributing points, by their natural and necessary effect substantially burden and directly regulate interstate commerce, create undue and unjust discriminations between localities in Minnesota and those in adjoining states, violate the commercial clause of the Constitution (article 1, § 8), and are void.

2. Same—Rates Confiscatory:

These acts and orders which prescribe maximum fares and rates, that bring from their respective Minnesota intrastate businesses to the Northern Pacific Company an annual net income of only 2.909 per cent., to the Great Northern Company an annual net income of only 3.359 per cent., and to the Minneapolis & St. Louis Company an annual net income of only 2.47 per cent., of the respective values of their Minnesota properties devoted to those businesses, prohibit a fair return upon these values, take the properties of the companies without just compensation, violate the fourteenth amendment to the Constitution, and are void.

3. Constitution — Commercial Clause — Carriers—Rates—National Power to Regulate Interstate Commerce Exclusive and Paramount:

The power to regulate commerce among the states was granted by the people to the nation in the Constitution, is exclusive, may be exercised to its utmost extent by the use of all means requisite to its complete exercise, and no state by virtue of its police power, or any other power it possesses, may restrict this grant or the plenary exercise of this power, for these inhere in the supreme law of the land and are paramount to the powers of the states.

4. Same—Rates in Interstate Commerce National and Free to the Extent Not Regulated by the Nation:

The fares and rates of transportation in interstate commerce are national in character, susceptible of uniform regulation, and so far as the nation has not regulated them are free from regulation by virtue of the commercial clause of the Constitution.

5. Constitution—Commercial Clause—Carriers—Rates—Limits of National and State Power of Regulation:

The nation may regulate interstate fares and rates and all interstate commerce.

To the extent necessary completely and effectually to protect the freedom of, and to regulate, interstate commerce, but no farther, it may by its Congress and its courts affect and regulate intrastate commerce.

To the extent that it does not substantially burden or regulate interstate commerce, a state may regulate intrastate commerce and the fares and rates therein within its borders, but no farther. It may enforce regulations of intrastate com-
609 merce and its fares and rates which only incidentally or remotely affect interstate commerce. But state laws, orders, and regulations concerning intrastate commerce, or the fares

or rates therein, which substantially burden or regulate interstate commerce, or the fares or rates therein, are beyond the powers of the state, unconstitutional, and void.

And where the attempted exercise of the power of a state to regulate intrastate commerce, or the attempted exercise of any of its other powers, impinges upon or conflicts with the constitutional power of the nation to protect the freedom of, and to regulate, interstate commerce and the fares and rates therein, the latter must prevail, because "that which is not supreme must yield to that which is supreme."

6. Constitution—Commercial Clause—Carriers—Rates—Effect, Not Terms, of State Regulation, Test of Substantial Burden on Interstate Commerce:

The effect, and neither the terms nor the purpose, of state regulations, determines whether they substantially burden, or only incidentally or remotely affect, interstate commerce.

And this is a judicial question, which each court must decide on its own responsibility on the special facts of the case before it, and in the decision of which it "must obey the Constitution, rather than the lawmaking department of the government."

7. Carriers—Rates—Discriminating Differences Between State and Interstate Rates Forbidden by Interstate Commerce Act:

The nation has the power to forbid, and by the act to regulate commerce (Act Feb. 4, 1887, c. 104, 24 Stat. 379 [U. S. Comp. St. 1901, p. 3154]), it has prohibited, undue discriminations between localities in different states wrought by unreasonable differences between intrastate and legal interstate rates caused by the reduction of the former by the acts and orders of the officers of a state.

8. Constitution—Commercial Clause—Minnesota Intrastate Rates Impose Unconstitutional Burdens on Interstate Commerce:

The facts considered, and *held:*

The unavoidable effect of the general and sweeping reductions of intrastate fares and rates in Minnesota, made by the acts and orders considered, was and is substantially to burden, directly to regulate, and to discriminate against the interstate commerce of the defendant companies, and to create undue and unjust discriminations between localities in Minnesota and those in other states, in violation of the commercial clause of the Constitution.

9. Carriers—Confiscatory Rates—Just Compensation Entitles to a Fair Return upon value of Property Used:

The just compensation secured by the fourteenth amendment entitles the defendant railroad companies to a fair return upon the reasonable value of their property in Minnesota devoted to the public use of transportation. Such a return is just to the public as well as to the carriers.

10. Carriers—Confiscatory Rates—Value of Railroad Properties—Cost of Reproduction New:

Under the evidence in these cases the cost of reproduction

new of the Minnesota properties of the defendant companies devoted to the public use of transportation is more persuasive evidence of their values than the market value of their stocks and bonds, or the original cost of their acquisition and construction.

11. Carriers—Confiscatory Rates—Reasonableness—Presumption of Correctness of Master's Findings Superior to Presumption of Reasonableness:

Rate making looks to the future, and is a legislative function. Rate judging, determining whether or not rates made are confiscatory, is a judicial function.

There is a presumption in the first instance that Legislatures and commissions make reasonable and just rates, and clear proof is requisite to overcome it.

But when, after fares and rates have been tried by actual use for months, after plenary proof of their effect and other facts
610 determinative of the issue confiscation vel non, has been made before a master learned in the law, who finds the facts, the legal or judicial presumption that his findings are just and right, while not conclusive, is superior to the original presumption that the rates were just and reasonable.

12. Carriers—Confiscatory Rates—Valuation—Cost of Reproduction—Interest During Construction:

Interest on the cost of reproduction of railroad property at 4 per cent. per annum during one-half the time requisite to acquire and construct it is a necessary expense of reproduction and may be lawfully allowed as such.

13. Same—Apportionment of Value—Revenue Basis Most Equitable:

Apportionment on the basis of revenue is the most reasonable and equitable method of assigning the value of railroad property in a state used for transportation to the various classes of its business, in order to determine the reasonableness of fares and rates.

14. Carriers—Confiscatory Rates—Reasonableness—Fair Return in Minnesota 7 Per Cent. Per Annum on Value Used:

A net income of 7 per cent. per annum upon the value of railroad property in Minnesota devoted to the public use of transportation is not more than the fair return to which a railroad company is entitled under the fourteenth amendment to the Constitution.

In Equity.

Jared How, Charles W. Bunn, Hale Holden, and Pierce Butler (Robert Thorne and William D. Mitchell, on the briefs), for complainants.

Edward T. Young and Edmund S. Durment (George T. Simpson, on the briefs), for defendants.

SANBORN, *Circuit Judge:*

In the year 1906 the Northern Pacific Railway Company, the Great Northern Railway Company, and the Minneapolis & St. Louis Railroad Company were carrying passengers and freight within, through, and without the state of Minnesota for legal fares, rates, and charges which had been established, filed and published in accordance with the provisions of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887 (24 Stat. 381, c. 104 [U. S. Comp. St. 1901, p. 3157]), and its amendments (U. S. Comp. St. Supp. 1909, pp. 1135, 1138, 1139), and these fares, rates, and charges were equable, relatively fair, and not discriminatory between interstate transportation and transportation within the state of Minnesota.

On September 6, 1906, the Railway and Warehouse Commission of the state of Minnesota by order directed a reduction of the maximum rates for the transportation of general merchandise within that state 20 to 25 per cent. below the fares and rates which these companies were then using, and on May 3, 1907, by a supplemental order it so reduced their in-rates to distributing points in the state that the reductions amounted in the case of the Northern Pacific Company to 13.58 per cent. On April 4, 1907, the Legislature of the state passed an act whereby it reduced maximum passenger fares within that state 33⅓ per cent. below the fares the companies were then using, and on April 18, 1907, it passed an act which reduced maximum commodity rates within the state 7.377 per cent. below the rates thereon in use by the companies. The laws of Minnesota required the companies, their officers and agents, to put these reduc-
611 tions in effect under severe and unconstitutional penalties. Ex parte Young, 209 U. S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932; Gen. Laws Minn. 1907, c. 97 (Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2); Gen. Laws 1907, c. 232 (Rev. Laws Supp. 1909, §§ 2007—11 to 2007—17); Rev. Laws Minn. 1905, § 1987. The companies made and have since maintained the prescribed reductions in the merchandise rates and the passenger fares, but at the suit of their stockholders this court temporarily enjoined them from reducing their commodity rates.

The complainants, stockholders respectively of these railroad companies, brought these suits against them and against the Attorney General and the members of the Railroad and Warehouse Commission of the state to prevent them from maintaining these fares and rates, on the grounds (1) that the orders of the Commission and the acts of the Legislature described substantially burdened and regulated interstate commerce on the railroads of these companies, and (2) that their necessary effect was the confiscation of property of the companies. The cases were referred to Hon. Charles E. Otis as special master to hear and report the evidence, to find the facts, and to recommend forms of decrees. He has made a clear, concise, and exhaustive finding of the facts, has returned all the evidence to the court, and has recommended decrees for the complainants on both of the grounds they presented. Exceptions to his report have been argued, and the cases are here for decree. In the discussion of the

questions at issue the term "defendants" will be used to designate the Attorney General and the members of the Railroad and Warehouse Commission, because they alone actively assail the findings and recommendation of the master.

The first question for consideration is whether or not the orders of the Commission and the acts of the Legislature substantially burden interstate commerce, and the answer to this question must be drawn from an application of the facts which disclose their effect to the established rules of law which govern this subject.

These orders and acts by their terms relate to intrastate fares and rates only. Counsel for the defendants insist that in the police power of the state is vested plenary authority to make and enforce them because they relate to commerce within the state only, while the complainants argue that their enforcement is beyond the power of the state because the effect of their necessary operation is substantially to burden interstate commerce and hence to invade the exclusive domain of the nation, in violation of the commercial clause of the Constitution (article 1, § 8).

The principles and rules of law by which these orders and acts must be tried have been conclusively established by the decisions of the Supreme Court, and it will not be unprofitable to state them here again and to bear them constantly in mind during the consideration of the facts which must determine the issue here presented.

The power to regulate commerce among the states was carved out of the general sovereign power by the people when the national government was formed, and granted by the Constitution to the Congress of the nation. That grant is exclusive. The United States may exercise that power to its utmost extent, may use all means requisite to its complete exercise, and no state, by virtue of any power it
612 possesses, either under the name of the police power or under any other name, may lawfully restrict or infringe this grant, or the plenary exercise of this power; for these are paramount to all the powers of the state and inhere in the supreme law of the land. The fares and rates of transportation of passengers and freight in interstate commerce are national in their character and susceptible of regulation by uniform rules. The silence or inaction of Congress relative to such a subject is a conclusive indication that it intends that the interstate commerce therein shall be free, so far as the Congress has not directly regulated it. Welton v. State of Missouri, 91 U. S. 275, 282, 23 L. Ed. 347; Brown v. Houston, 114 U. S. 622, 631, 5 Sup. Ct. 1091, 29 L. Ed. 257; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 485, 507, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Walling v. Michigan, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691; Hall v. De Cuir, 95 U. S. 485, 490, 24 L. Ed. 547; Wabash, St. L. & P. R. Co. v. Illinois, 118 U. S. 557, 570, 573, 7 Sup. Ct. 4, 30 L. Ed. 244.

To the extent necessary completely and effectually to protect the freedom of and to regulate interstate commerce the nation by its Congress and its courts may affect and regulate intrastate commerce, but no farther.

To the extent that it does not substantially burden or regulate in-

terstate commerce a state may regulate the intrastate commerce within its borders, but no farther.

If the plenary power of the nation to protect the freedom of and to regulate interstate commerce and the attempted exercise by a state of its power to regulate intrastate commerce, or the attempted exercise of any of its other powers, impinge or conflict, the former must prevail and the latter must give way, because the Constitution and the acts of Congress passed in pursuance thereof are the supreme law of the land, and "that which is not supreme must yield to that which is supreme." Brown v. Maryland, 12 Wheat. 419, 448, 6 L. Ed. 678; Gibbons v. Ogden, 9 Wheat. 1, 209, 210, 6 L. Ed. 23; Wabash, St. L. & P. Ry. Co. v. Illinois, 118 U. S. 557, 573, 7 Sup. Ct. 4, 30 L. Ed. 244; Covington, etc., Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962; Houston & T. C. R. Co. v. Mayes, 201 U. S. 321, 327, 328, 26 Sup. Ct. 491, 50 L. Ed. 772; Cleveland, C., C. & St. L. R. Co. v. Illinois, 177 U. S. 514, 517, 519, 521, 20 Sup. Ct. 722, 44 L. Ed. 868; Mississippi Railroad Commission v. Illinois Central R. Co., 203 U. S. 335, 343, 27 Sup. Ct. 90, 51 L. Ed. 209; Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 24, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Hall v. De Cuir, 95 U. S. 485, 488-490, 497, 498-513, 24 L. Ed. 547; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347; Crutcher v. Kentucky, 141 U. S. 47, 57, 58, 59, 11 Sup. Ct. 851, 35 L. Ed. 649.

Thus a part of every interstate transportation is carried on within the state of its initiation and concluded within another state,
613 but neither state may fix or regulate the fares or rates of the part within its borders, because the authority so to do is requisite to the complete preservation of the freedom of, and to the untrammeled regulation of, that transportation, and this power is vested exclusively in the nation. Wabash, etc., R. R. Co. v. Illinois, 118 U. S. 557, 575, 7 Sup. Ct. 4, 30 L. Ed. 244.

The nation and many states provide that carriers may not charge a higher rate for a short haul than for a long haul of like articles in the same direction under similar circumstances. But where the long haul is interstate, although the short haul is entirely within a single state, such a state may not enforce such a law for the same reason. Louisville & Nashville R. Co. v. Eubank, 184 U. S. 27, 42, 43, 22 Sup. Ct. 277, 46 L. Ed. 416.

A state has the general power to prescribe the terms under which foreign corporations may carry on business within it, but any attempted exercise of that power by statute or otherwise in such a way as to prohibit or substantially to burden the interstate commerce of a foreign corporation within its borders is unconstitutional and void. Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423; Pullman Com-

pany v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed. 1, 6-11, 12, 13, 84 C. C. A. 167, 172, 177.

Subject to the constitutional limitation, which has been stated, a state may enact and enforce laws prescribing reasonable fares and rates for and otherwise regulating its intrastate commerce, although the operation of such laws remotely or incidentally affects interstate commerce, such as statutes regulating elevator charges (Munn v. Illinois, 94 U. S. 113, 135, 24 L. Ed. 77; Budd v. New York, 143 U. S. 517, 545, 12 Sup. Ct. 468, 36 L. Ed. 247); requiring track connections at a junction (Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct., 115, 45 L. Ed. 194); prohibiting the operation of freight trains on Sunday, regulating the liability of the initial carrier beyond its line (Richmond, etc., R. R. Co. v. Patterson Tobacco Co., 169 U. S. 311, 18 Sup. Ct. 335, 42 L. Ed. 759); requiring the reasonable stopping of passenger trains at stations (Lake Shore & Michigan South. Ry. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702; Gladson v. Minnesota, 166 U. S. 427, 431, 17 Sup. Ct. 627, 41 L. Ed. 1064); requiring telegraph companies to receive messages within a state and transmit them with reasonable diligence (Western Union Telegraph Co. v. James, 162 U. S. 650, 656, 16 Sup. Ct. 934, 40 L. Ed. 1105); excluding diseased cattle by means of a reasonable inspection law (Asbell v. State of Kansas, 209 U. S. 251, 256, 28 Sup. Ct. 485, 52 L. Ed. 778); requiring reasonable connections between trains of different companies (Atlantic Coast Line R. R. Co. v. North Carolina Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. Ed. 933); regulating reasonably the operation of passenger trains (Missouri Pacific Ry. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 330, 54 L. Ed. 472); requiring the transfer of cars to a mill near a crossing (Missouri Pacific Ry. Co. v. Larabee Mills Co.,
614 211 U. S. 612, 620, 622, 29 Sup. Ct. 214, 53 L. Ed. 352); prohibiting the possession of game (New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 40, 41, 29 Sup. Ct. 10, 53 L. Ed. 75); requiring locomotive engineers to be examined and licensed (Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. 564, 31 L. Ed. 508; Nashville, etc., Ry. Co. v. Alabama, 128 U. S. 96, 9 Sup. Ct. 28, 32 L. Ed. 352); requiring railway companies to fix their rates annually for the transportation of passengers and freights and to post a printed copy of such rates at their stations (Railroad Company v. Fuller, 17 Wall. 560, 21 L. Ed. 710); forbidding the consolidation of parallel or competing lines of railway (Louisville & Nashville R. R. Co. v. Kentucky, 161 U. S. 677, 16 Sup. Ct. 714, 40 L. Ed. 849); regulating the heating of passenger cars and directing guards and guard posts to be placed on railroad bridges and trestles and the approaches thereto (New York, N. H. & H. R. R. Co. v. New York, 165 U. S. 628, 17 Sup. Ct. 418, 41 L. Ed. 853); providing that no contract made within the state shall exempt any railroad corporation from the liability of a common carrier or a carrier of passengers which would have existed if no contract had been made (Chicago, Milwaukee & St. Paul Ry. Co. v. Solan, 169 U. S. 133, 18 Sup. Ct. 289, 42 L. Ed. 688); prescribing rates within the state on a single

article, coal (Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S. 257, 265, 22 Sup. Ct. 900, 46 L. Ed. 1151; Northern Pacific Ry. Co. v. North Dakota, 216 U. S. 579, 30 Sup. Ct. 423, 54 L. Ed. 624).

On the other hand, the laws of a state or the orders of its commissions relating to its intrastate commerce which by their necessary or natural or probable operation have the effect substantially to burden interstate commerce are beyond its powers, violative of the commercial clause of the Constitution, and void. Of this character are statutes imposing burdensome conditions on the landing of passengers from vessels employed in foreign commerce (Henderson v. Mayor of New York, etc., 92 U. S. 259, 268, 23 L. Ed. 543); requiring carriers engaged in interstate commerce to give all persons upon their public conveyances equal rights and privileges in all parts of those conveyances without discrimination or distinction on account of race or color (Hall v. De Cuir, 95 U. S. 485, 486, 488, 490, 24 L. Ed. 547); requiring telegraph companies to deliver dispatches by messenger to the persons to whom they are addressed so far as such a statute attempts to regulate the delivery of such dispatches at places in other states (Western Union Telegraph Co. v. Pendleton, 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. Ed. 1187); prohibiting a higher rate for a short haul entirely within the state than that charged for a longer interstate haul (Wabash, etc., Ry. Co. v. Illinois, 118 U. S. 557, 573, 7 Sup. Ct. 4, 30 L. Ed. 244); forbidding common carriers to bring intoxicationg liquors into a state without a certificate that the consignee is authorized to sell such liquors in the county (Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700); prohibiting the sale in a state of fresh meats which have not been taken from animals inspected within the state within 24 hours before they are slaughtered (Minnesota v. Barber, 136 U. S. 313, 322, 329, 10 Sup. Ct. 862, 34 L. Ed. 455); prohibiting the sale of fresh meats from animals slaughtered 100 miles or more
615 from the place at which they are offered for sale, unless they have been previously inspected by local inspectors (Brimmer v. Rebman, 138 U. S. 78, 81, 11 Sup. Ct. 213, 34 L. Ed. 862); prescribing tolls for the use of a bridge across a river between two states (Covington Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962); requiring a railroad company engaged in interstate commerce to furnish an unreasonable number of cars to shippers in the state upon demand (Houston, etc., Ry. Co. vs. Mayes, 201 U. S. 321, 327, 328, 26 Sup. Ct. 491, 50 L. Ed. 772); requiring such a company to stop all its regular trains at county seats on its line (Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 517, 519, 20 Sup. Ct. 722, 44 L. Ed. 868); requiring such a company to stop its through fast trains at a specified station in the state (Atlantic Coast Line R. R. Co. v. Wharton, 207 U. S. 328, 334, 337, 28 Sup. Ct. 121, 52 L. Ed. 230); levying a tax "equal to 1 per cent. of its gross receipts" on each railroad lying wholly within the state (Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031); and requiring foreign corporations to pay large fees as a condition of carrying on business entirely intrastate within a state, although by the

orders of the charter board expressly leaving these corporations free to carry on interstate commerce in the state without any condition or restriction (Western Union Telegraph Co. vs. Kansas, 16 U. S. 1, 7, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 163, 30 Sup. Ct. 280, 54 L. Ed. 423).

The acts of the Legislature of Minnesota and the orders of its commission are so general and so far reaching in their effect that there is no doubt that they unavoidably affect the interstate commerce of the companies. In the light of the rules and decisions reviewed, the question here at issue therefore becomes: Do these statutes and orders substantially burden or only incidentally or remotely affect the interstate commerce of the companies? This question, however, may not be answered by the words or terms of the laws and orders, or by a consideration of the intent or purpose of their makers alone. The touchstone to the true answer to the question and the test of the validity of the orders and statutes is their effect upon interstate commerce.

It is the effect, and not the terms or purpose, of state regulations of its local commerce, that determines whether or not they so substantially burden interstate commerce that they violate the commercial clause of the Constitution. And this is a judicial question which each court must determine on its own responsibility on the special facts of each particular case, and in the determination and decision of which it "must obey the Constitution rather than the law-making department of the government." Mugler v. Kansas, 123 U. S. 623, 661, 8 Sup. Ct. 273, 31 L. Ed. 205; Henderson v. Mayor of New York, 92 U. S. 259, 268, 23 L. Ed. 543; Minnesota v. Barber, 136 U. S. 213, 319, 330, 10 Sup. Ct. 862, 34 L. Ed. 455; Brimmer v. Rebman, 138 U. S. 78, 81, 11 Sup. Ct. 213, 34 L. Ed. 862; Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 522, 20 Sup.
616 Ct. 722, 44 L. Ed. 868; Louisville & Nashville R. R. Co. v. Eubank, 184 U. S. 27, 43, 22 Sup. Ct. 277, 46 L. Ed. 416; Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 24, 27, 30, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423.

The counter proposition again presented in this case, that it is only where orders and statutes by their terms or by their construction by state courts substantially or directly regulate interstate commerce, or where by their terms they disclose an intent of their makers so to do that they may be adjudged violative of the commercial clause, has been repeatedly urged upon the consideration of the Supreme Court in the cases just cited, and in many others only to be conclusively denied. In Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031, a case which involved a statute levying a tax upon a road entirely within the state which the court held to be a substantial burden upon interstate commerce and void, it said:

"Neither the state courts, nor the Legislatures, by giving the tax a particular name, or by the use of some form or words, can take away our duty to consider its nature and effect. If it bears upon commerce among the states so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form."

Only last year in the Kansas cases (216 U. S. 1, 56, 30 Sup. Ct. 190, 54 L. Ed. 355), the Supreme Court again repudiated this contention. In those cases a statute of Kansas required of foreign corporations certain fees as a condition of permitting them to conduct intrastate business in that state. The Western Union Telegraph Company, which was carrying on both intrastate and interstate business in Kansas, applied for permission to continue its intrastate business, and the charter board of the state ordered that its application be granted only on condition that it pay the fee prescribed by the statute, and "that nothing herein contained shall apply to nor be construed as restricting in any wise the transaction by the said applicant of its interstate business, nor its business for the federal government, but that this grant of authority and requirement as to payment relates only to the business transacted wholly within the state of Kansas." The officers of the state insisted that this statute and this order were valid because by their express terms they excluded interstate business, applied to intrastate business alone, and disclosed a clear purpose and intent of the Legislature and the board not to obstruct or embarrass interstate commerce in any way. But the Supreme Court reviewed several of its earlier decisions upon this subject, held the statute and the order unconstitutional, and, among other things, said:

"But the disavowal by the state of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such
617 matters the judiciary will not regard mere forms, but will look through forms to the substance of things." 216 U. S. 1, 27, 30 Sup. Ct. 190, 197, 54 L. Ed. 355.

And Mr. Justice White in the Pullman Company's Case, 216 U. S., at page 65, 30 Sup. Ct., at page 236 (54 L. Ed. 378), which involved the same statute, said that one of the propositions conclusively established by previous decisions of the court was that:

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on."

And Mr. Justice Harlan in Ludwig v. Western Union Telegraph

Co., 216 U. S., at page 162, 30 Sup. Ct., at page 285 (54 L. Ed. 423), discussing a similar statute of Arkansas, said:

"According to well-settled rules of statutory construction, the validity of a statute, whatever its language, must be determined by its effect or operation, as manifested by the natural and reasonable meaning of the words employed. Henderson v. Mayor of New York, 92 U. S. 259, 268 [23 L. Ed. 543]. If a statute by its necessary operation really and substantially burdens the interstate business of a foreign corporation seeking to do business in a state, or imposes a tax on its property outside of such state, then it is unconstitutional and void, although the state Legislature may not have intended to enact an invalid statute."

Here, then, is the decisive question upon this branch of these cases. Is the effect of the statutes and orders assailed substantially to burden the interstate commerce of the companies? And we turn to the facts of this case for the answer.

The Northern Pacific Railway Company is a corporation and a common carrier that on June 30, 1906, owned and was operating 7,694 miles of railroad track, of which 1,625 miles are in the state of Minnesota. Its main line extends from Superior, Wis., and Duluth, Minn., which sit side by side at the westerly end of Lake Superior, St. Paul, and Minneapolis, Minn., westerly through North Dakota, Montana, Idaho, Washington, and Oregon, to Seattle, Tacoma, and Portland on the Pacific Coast. From Duluth to other points in Minnesota reached by it the company has an interstate line passing through Wisconsin and a local line that joins the interstate line at Carlton, 20 miles westerly from Duluth. Its main line crosses the western line of Minnesota at Moorhead, Minn., and Fargo, N. D., 250 miles from St. Paul. It has two branch lines, which cross the western line of the state at East Grand Forks, Minn., and Grand Forks, N. D., 320 miles from St. Paul, and at Breckenridge, Minn., and Wahpeton, N. D., 237 miles from St. Paul, respectively.

The Great Northern Railway Company is a corporation and a common carrier that owned and was operating lines of railway comprehending on June 30, 1906, 8,528 miles of track, of which 2,779 miles are in Minnesota. Its main lines extend from Superior, Wis., and Duluth, Minn., in a westerly direction through the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, to the cities of Seattle and Portland. Its line
618 between Duluth, Minn., and other points in Minnesota, reached by it, passes through the state of Wisconsin. It has five lines of railway which cross the western line of Minnesota and extend westerly into or through other states, one from Minneapolis by way of Willmar, which crosses at Breckenridge, Minn., and Wahpeton, N. D., 214 miles from St. Paul; one from Minneapolis by way of Barnesville, which crosses at Moorhead, Minn., and Fargo, N. D., 241 miles from St. Paul; one from Duluth by way of Crookston, which crosses at East Grand Forks, Minn., and Grand Forks, N. D., 296 miles from Duluth; one which leaves the Willmar main line at Benson and crosses the Minnesota line at Nassau, 173 miles from St. Paul; one which leaves the main line at Willmar and crosses the

Minnesota line at Jasper, Minn., 218 miles from St. Paul; and it also has a branch line wholly within the state of Minnesota, which leaves the main line at Barnesville and extends northerly to Noyes, 391 miles from St. Paul.

The Minneapolis & St. Louis Railroad Company is a corporation and a common carrier that owned and operated lines of railroad comprehending on the 30th day of June, 1906, 632 miles of track, and that operated by means of leases or trackage rights 396 miles of track. Its main line extends from St. Paul and Minneapolis, Minn., westerly by way of Winthrop, Minn., to Lebeau, S. D., from St. Paul and Minneapolis, southwesterly by way of Winthrop, Minn., to Storm Lake, Iowa, and from St. Paul and Minneapolis, southerly by way of Albert Lea, Minn., to Des Moines, Iowa.

The whole railroad properties of each of these companies has constituted and still constitutes a single system, and has been and is operated by each of said companies as such. The cars, engines, and supplies of each company customarily have been and are used upon its system without regard to whether the business in which they have been or are employed has been or is interstate business or business local to a state. Each of said companies customarily has carried and does carry interstate passengers and passengers local to the state on the same train and in the same car, and interstate freight and freight local to a state on the same train, and if less than car load freight in the same car. There has never been any separation, and it is impracticable in the exercise of any fair economy to make and maintain any separation in the business of transporting interstate passengers and passengers local to the state, or between interstate freight and freight local to a state.

By far the larger proportion of the business of each of these companies is interstate, and by far the larger proportion of the business of each of these companies within the state of Minnesota is interstate. In the year 1906 the freight business of the Northern Pacific Company local to Minnesota was 2.67 per cent. of its entire freight business and 12.33 per cent. of its freight business touching the state and its passenger business local to the state was 5.79 per cent. of its entire passenger business and 67.21 per cent. of its passenger business touching the state.

The conditions attending the transportation of passengers and of freight have been and are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota,
619 North Dakota, and South Dakota reached by the lines of railway operated by either of these companies, whether such transportation has been or is a business local to a state or interstate between any or all of these states.

Prior to the orders and acts here in question the fares and rates in force upon these lines of railway for the transportation of passengers and freight were lawful, for they had been adopted in accordance with the provisions of the act of Congress, were relatively fair, and were not discriminatory between intersate business and business local to any state.

Any substantial change in the basis of rates thus established and in force, or in any particular rate, due only to the fact that the trans-

portation was interstate, or that it was local to a state, would have been actual, undue, and unjust discrimination in fact and any substantial difference in rates for the transportation of passengers, merchandise, or commodities maintained by either of said companies as between traffic local to the state and traffic which goes between the state of Minnesota and either of its neighboring states will constitute actual, undue, and unjust discrimination in fact.

Substantially all commodities and property which are the subject of transportation are classified and arranged in 10 groups with reference to their general character and value, and the cost of transportation thereof and this classification with modifications from time to time made therein has long been used by carriers in the West and Northwest as a basis for fixing rates. Commodities of each class take the same rate under like conditions, and this classification is called the "Western classification." In Minnesota, however, many commodities amounting to several hundred have by the action of the Minnesota Commission been removed from this Western classification, and given special rates, which are called "commodity rates," or have been reduced in class, so that the Western classification in Minnesota is in many respects different from the Western classification in general use. The Commission by its order made on September 6, 1906, prescribed a schedule of maximum rates for the transportation within the state of Minnesota of articles covered by this Western classification as modified by the intervention of the Commission, and required the railway companies to observe these rates. This schedule was such that each rate for each class for any distance bore such an exact relation to each other rate that, given one rate out of the schedule, any other rate could be ascertained by mathematical calculation, and without reference to the schedule itself. This is the plan of the schedule.

For first-class merchandise an allowance of 11.2 cents per cwt. is made for terminal charges, and for each five miles or fraction thereof up to 200 miles .98 of a cent for hauling charge, so that for a distance of five miles the rate is 12 cents per cwt., for a distance of 10 miles the rate is 12.98 cents per cwt., and for a distance of 200 miles the rate is 50.22 cents per cwt. After a distance of 200 miles is reached, .98 of a cent is allowed per cwt. as a hauling charge for each 10 miles or fraction thereof up to 400 miles, so that, the rate for 200 miles being 50.22 cents per cwt., the rate for 210 miles is 51.20 cents, for 220 miles the rate is 52.18 cents, and for 400 miles the
620 rate is 69.82 cents per cwt. After a distance of 400 miles is reached, .98 of a cent is allowed as a hauling charge per cwt. for each 20 miles or fraction thereof up to 500 miles; so that, the rate for 400 miles being 69.82 cents per cwt., the rate for 420 miles is 70.80 cents, and the rate for 500 miles is 74.72 cents per cwt. There are 10 classes of merchandise provided for in this schedule. The rates for classes other than the first class are a fixed per centum of the corresponding rates for the first class, those for the second class being 83 1/3 per cent., for the third class being 66 2/3 per cent., for the fourth class being 50 per cent., for the fifth class being 40 per cent., for class A being 45 per cent., for class B being 35 per

cent., for class C being 30 per cent., for class D being 25 per cent., and for class E being 20 per cent. The rates thus prescribed are maximum terminal rates, and may be increased by 5 per centum for shipments between stations, neither of which is a terminal or a distributing station. The reduction in merchandise rates made by this order of September 6, 1906, was from 20 per cent. to 25 per cent. of the rates theretofore in force. Notwithstanding the extent of this reduction, all the railway companies interested put the rates prescribed by this order into effect on November 15, 1906, and they have ever since been, and still are, maintained by all the companies concerned as maximum rates for the transportation within the state of merchandise covered by the order.

On May 3, 1907, the Commission made an order supplemental to that of September 6, 1906, for the purpose of securing more favorable in-rates to a number of jobbing centers in the state of Minnesota other than St. Paul, Minneapolis, and Duluth. This order had the effect to substantially reduce the previously existing rates to the extent in the case of the Northern Pacific Company of 13.577 per cent. Nevertheless, the railroad companies put in force and have since maintained the rates prescribed by this supplemental order.

The rates prescribed for the articles specified in this Western classification as modified are called "merchandise rates."

By chapter 232 of the Laws of Minnesota 1907, approved April 18, 1907, the Legislature of Minnesota created seven new classes of commodities numbered 11 to 17. Wheat and 13 other articles were placed in class 11, corn and 37 other articles in class 12, lumber and 5 other articles in class 13, sheep in double-decked cars and cattle in class 14, sheep in single-decked cars and hogs in class 15, hard coal in class 16, and soft coal in class 17; and it prescribed and required the companies to observe maximum rates for the transportation of these articles in Minnesota which were on the average 7.37 per cent. below those then lawfully in force, and the rates on grain and coal that were then in force on the Northern Pacific and Great Northern lines had been reduced by those companies in the preceding September and October about 10 per cent. These rates are called "commodity rates" and the companies, in view of the severe penalties denounced for a failure to comply with the act, were about to put them in force when they were enjoined at the suit of the complainants.

By chapter 97 of the Laws of Minnesota 1907, the Legislature prescribed and required the companies to observe maximum rates of 2 cents a mile for passengers over, and 1 cent a mile for pas-
621 sengers under, 12 years of age for the transportation of such passengers within the state of Minnesota. This law required a reduction of 33⅓ per cent. of the then established lawful rates, and the companies, in view of the severe penalties prescribed for a violation of this law, put these rates in force and have since maintained them.

The average reduction of fares and rates required by these orders and acts were:

(1) On general merchandise 20 per cent. to 25 per cent. by the order of September 6, 1906.

(2) In in-rates to distributing stations amounting in the Northern Pacific case to 13.58 per cent.

(3) In maximum rates on grain, lumber, live stock, coal, etc., 7.377 per cent.

(4) In maximum rates on passengers 33⅓ per cent.

Superior, Wis., and Duluth, Minn., are situated side by side at the western extremity of Lake Superior. Each is an important business center. Conditions attending transportation to and from either of them are the same as to or from the other. The railroad companies reaching them have always accorded them and do accord them like rates in and out. They ship and receive the same kinds of freight and to and from the same localities. Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates. The propriety of a parity of rates to and from these localities has always been recognized.

For the same reasons, each of the couples of cities composed of Grand Forks, N. D., and East Grand Forks, Minn., Fargo, N. D., and Moorhead, Minn., and Wahpeton, N. D., and Breckenridge, Minn., have always been accorded by the railway companies serving them like rates in and out. The cities in each pair depend upon the same carriers, have substantially the same producing and consuming markets, and receive and ship the same kinds of articles. Any substantial difference in rates as between the cities composing each pair would seriously damage, if not wholly destroy, the commerce of the city given the higher rate, and would be an undue and unjust preference and advantage in fact for its neighboring city.

Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the company's property in Superior.

Merchandise Rates.

The schedule comprehended within the order of September 6, 1906, prescribed maximum rates for transportation within the state of Minnesota which were from 20 per cent. to 25 per cent. lower than those theretofore established by the Northern Pacific and Great Northern Companies and maintained by them up to the time of the taking effect of the order for transportation in Wisconsin, Minnesota, and North Dakota, regardless of whether such transportation was local to either state or interstate between any two of them. If
622 these companies after the installation of the rates prescribed by the order for transportation within Minnesota had continued to maintain the former rates for transportation between Minnesota and an adjoining state, the result would have been serious discrimination against localities in the neighboring states.

For example, prior to the taking effect of the order, the rate maintained by the Northern Pacific on a 200-pound barrel of flour (fourth class) from Minneapolis to Fargo was 68 cents. The schedule fixed

54.2 cents as a maximum from Minneapolis to Moorhead. This is a fair example of the difference between the former interstate rates for transportation between Minnesota and an adjoining state and the rates prescribed by the order for transportation within the state.

On the same day that the Northern Pacific Company installed its rates in Minnesota as prescribed by the order, it reduced its interstate rates between Superior and points in Minnesota to an exact parity with its rates between Duluth and other points in Minnesota, its interstate rates between Grand Forks, Fargo, and Wahpeton, N. D., and Minnesota points to an exact parity with its rates between East Grand Forks, Moorhead, and Breckenridge, respectively, and other Minnesota points and its interstate rates between Superior and Grand Forks, Fargo, and Wahpeton, respectively, to an exact parity with its state rates between Duluth and East Grand Forks, Moorhead, and Breckenridge, respectively. The reduction was substantial. For example, the reduction in the rate on first class from Superior to Fargo was from 65 cents per cwt. to 54.1 cents per cwt., and on fifth class from 27 cents per cwt. to 21.7 per cwt.

These reductions were compelled by the necessary and direct effect of the operation of the order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth, Fargo, Grand Forks, and Wahpeton could not have competed with Moorhead, East Grand Forks, and Breckenridge, respectively, nor could Superior have transacted business successfully with Fargo, Grand Forks, or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the order between these localities.

On the same day that the Northern Pacific made these reductions in its interstate rates the Great Northern made similar reductions, although its business between Duluth and Minnesota points is interstate. The reason for its reductions from Duluth was to preserve the relation in rates from Duluth which had always existed between localities on the Great Northern and localities similarly circumstanced on the Northern Pacific, and also to meet the reduced rates on the Northern Pacific line.

Moorhead, Minn., Fargo and Bismark, N. D., Billings and Butte, Mont., are so-called "jobbing centers." Prior to the taking effect of the order of September 6, 1906, they had always been accorded rates by the Northern Pacific Company which would allow them to compete in distribution of merchandise with their nearest neighbors and with St. Paul and Minneapolis and Duluth. The sum of car load rates from St. Paul, Minneapolis, and Duluth to these centers
623 and the less than car load rates out from these centers to the territory geographically tributary to them, respectively, had been such as to compare favorably with rates in and out of their local competitors as well as with less than car load rates from St. Paul, Minneapolis, and Duluth into the territory geographically served by them, respectively. The order of September 6, 1906, as supplemented by the order of May 3, 1907, substantially reduced

car load rates from Duluth, St. Paul, and Minneapolis to Moorhead. This reduction would have given Moorhead a substantial advantage in territory accessible to its jobbing industry, not only as against Fargo unless car load rates to Fargo should have been similarly reduced, but also as against Duluth, St. Paul, and Minneapolis unless less than car load rates from these points to points geographically accessible to Moorhead, which included a considerable territory in North Dakota, should have been proportionately reduced. This reduction, unless accompanied by a corresponding reduction in car load rates to Fargo from the eastern terminals, would have served to build up Moorhead at the expense of Fargo, and therefore to discriminate unduly and unjustly against Fargo as a matter of fact, and would destroy the relation in rates which had theretofore existed between the sum of car load rates into Moorhead and less than car load distributing rates out on the one hand, and less than car load distributing rates from Duluth, St. Paul, and Minneapolis to localities accessible to Moorhead on the other. If Fargo were protected as against Moorhead by a like reduction in car load rates, it would have an advantage and preference over Bismarck in territory common to them both and an advantage over the eastern terminals in territory common to Fargo and them, unless car load rates from the eastern terminals to Bismarck and less than car load rates from the eastern terminals to the territory accessible to Fargo should be correspondingly reduced; and this advantage would constitute an undue and unjust preference to Fargo as against Bismarck, which competes in certain territory with Fargo, unless rates on car load lots from the eastern terminals to Bismarck should be correspondingly reduced. And so on, from distributing point to distributing point.

Every rate comprehends two terminal charges, the initial and the final, and a distance haulage charge. It is a cardinal principle of rate making that a rate for a longer distance should be proportionately smaller than one for a shorter distance; that is to say, that a rate for 500 miles should be less than twice the rate for 250 miles, if conditions of transportation be the same, because the rate for 250 miles includes two terminal charges, and, if the rate for 500 miles were twice the rate for 250 miles, it would manifestly include the equivalent of four terminal charges. Even if the haulage charge were the same per mile for a haul of 500 miles as for a haul of 250 miles, which is contrary to the rule generally applied in rate making, the rate per ton per mile for the 500 miles should be less than for the 250 miles because in the one case the terminal charges would be spread over 500 miles and in the other over only 250 miles.

Comparison of rates at present maintained by the Northern Pacific Company from St. Paul to various stations in North Dakota and Montana with those established by the order of September 6, 1906, and now maintained by the company between St. Paul and Moorhead, discloses that the Commission made rates from St. Paul to Moorhead are in general substantially less than the proportion of the presently maintained interstate rates of the company to these various points in North Dakota and Montana, based on the mileage in Minnesota as compared to that of the entire

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haul. For example, the present rate maintained by the Northern Pacific on class E, merchandise from St. Paul to Miles City, 743 miles from St. Paul, is 39 cents per cwt. The rate to Moorhead, based on the proportion of 39 cents, which the mileage of the haul in Minnesota is of the entire haul, is 13 cents. The order allows only 11 cents per cwt. from St. Paul to Moorhead, in which, of course, are included two full terminal charges. Maintaining rates comparison of which shows this result involves substantial, undue, and unjust discrimination in fact against the interstate localities. And a reduction of the interstate rates compelled by the reduction of the state rates substantially burdens interstate commerce and restricts its freedom.

After the installation by the Great Northern and the Northern Pacific companies of the rates prescribed by the order of September 6, 1906, it appeared that the sum of the locals from St. Paul to Moorhead and from Moorhead to many points in North Dakota was less than the theretofore established and maintained interstate rates from St. Paul to these points in North Dakota. Both companies thereupon established and now maintain rates from St. Paul to these North Dakota points as a rule no greater than the sum of the locals on Moorhead, but which are substantially lower in general than the interstate rates maintained by them at the time of the taking effect of the order. Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of the locals based on the state line would have involved undue and unjust discrimination in fact.

As a matter of fact, the reasons for such reduction were to prevent transshipment at Moorhead in order to take advantage of the lower sum of the locals; to retain on its line traffic which was liable to reach Moorhead over other lines by reason of competition; and, as to less than car load lots, to enable jobbers in the Twin Cities and Duluth to compete with Moorhead and Fargo in territory which otherwise the latter would have exclusively occupied by reason of their closer proximity thereto.

It is one of the fundamental dogmas of rate making that the haulage charge per mile shall not increase with increasing distance, if conditions be the same. The order of September 6, 1906, promulgates a schedule which for first-class merchandise, for example, allows a terminal charge of 11.02 cents per cwt. and a haulage charge of .98 cent per 5 miles up to 200 miles, then a haulage charge of .98 cent per 10 miles for added distance up to 400 miles, and then a haulage charge of .98 cent per 20 miles up to 500 miles—the limit of distance covered by the order. Both the terminal charge and the haulage charge allowed by the other merchandise classes are a fixed percentage of those allowed for first. Under this schedule, a hundred pounds of merchandise transported by the Northern Pacific from St. Paul to Moorhead, 248 miles, has been hauled for 48 miles, at the rate of .98 cent per 10 miles when Moorhead is reached. If
625 this same haulage charge of .98 cent per 10 miles be applied for the remaining distance of the haul from St. Paul to Spokane, Wash., 1,510 miles from St. Paul (which is taken as a fair example merely for the illustration of this principle), it would

produce a rate from St. Paul to Spokane on first-class merchandise of $1.79 per cwt. The Interstate Commerce Commission in the Spokane Rate Case has fixed the reasonable rate on first-class merchandise from St. Paul to Spokane of $2.50. Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the state carried on over the same rails and under the same conditions, and involves necessarily undue and unjust discrimination in fact against localities westerly of the Minnesota-North Dakota boundary line.

For more than 25 years the Northern Pacific Company has maintained an equal basis of rates on merchandise between its eastern terminals and Butte and its western terminals and Butte, and between its eastern terminals and localities intermediate between them and Butte, and between its western terminals and localities intermediate between them and Butte. Other railroads reaching Butte have during the same time maintained like rates to Butte from Sioux City, Omaha, St. Joseph, and Kansas City on the east, and from San Francisco, Sacramento, and Los Angeles on the west. Butte has been as the hub of a wheel, with spokes representing equal rates to these various cities. Industries have been born and have grown in reliance upon this parity of rates. Intermediate points have had rates fixed in proportion with the Butte rates. Competition of markets and of carriers has brought this about. The Northern Pacific Company cannot maintain its present Commission made rates between its eastern terminals and Moorhead, and at the same time its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations. If, then, the Northern Pacific maintains the Commission made rates between its eastern terminals and Moorhead, it must either substantially discriminate in fact or destroy the general relation of rates which has existed for many years in the territory between the Missouri river and the Pacific Coast. In this way the reduction of the rates in Minnesota either imposes a substantial burden upon, and a regulation of, interstate commerce or compels unjust discrimination therein.

Prior to the taking effect of the order of September 6, 1906, the Great Northern and Northern Pacific Companies had established joint through rates in connection with other carriers from all localities easterly or southerly of the state of Minnesota to all points in Minnesota westerly of St. Paul and Minneapolis reached by them,
626 respectively, and these rates were in force at the time of the taking effect of the order. After the rates prescribed by the order were installed, the sum of the locals on St. Paul from

all localities southerly and easterly of Minnesota to all localities in Minnesota westerly of St. Paul and Minneapolis reached by these companies was substantially less than the then existing interstate rates between such localities southerly or easterly of Minnesota and such Minnesota localities. Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities easterly and southerly of Minnesota and an unjust and undue preference and advantage in fact for St. Paul, because merchandise could have been shipped from all localities easterly and southerly of Minnesota to St. Paul on the theretofore established and then existing interstate rates and distributed from St. Paul to all points westerly of St. Paul and Minneapolis on the rates prescribed by the order for substantially less charges in the aggregate than would have been incurred for the through haul under the then existing through interstate rates. In order to avoid this discrimination, the companies forthwith, after the taking effect of the order, withdrew the then existing interstate rates, and established a new tariff of through rates which were no higher than the sum of the locals on St. Paul. For example, the former through rates from Chicago to Wadena, Minn., on first-class merchandise, was $1.09 per cwt. The sum of the locals on St. Paul after the taking effect of the order was $1.004. The present through rate is $1.004, being a reduction of 8.6 cents per cwt. In other words, the reduction in the Minnesota rates compelled an unjust discrimination in interstate rates, or submission to the imposition of a substantial burden on interstate commerce.

Conditions attending transportation are substantially the same in Minnesota and North Dakota, whether the transportation is local to either state or interstate between them. If unjust and undue preference or advantage in rates is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern Companies have prior to the taking effect of the order maintained an equable basis of rates in the territory which these two states compose without regard to state line. For example, the interstate rates from Moorhead, Minn., westerly into North Dakota, have been the same as from Moorhead easterly into Minnesota, and no conditions have existed, or do exist, which justify a different basis of rates for east-bound to that for west-bound transportation.

Prior to the installation of the rates prescribed by the order, the rate per cwt. of first-class merchandise for 100 miles, for example, out of Moorhead, whether westerly, into North Dakota or easterly, into Minnesota, was 43 cents. For transportation westwardly into North Dakota this rate from Moorhead still exists. The rate prescribed by the order and now in effect from Moorhead eastwardly into Minnesota is per cwt. of first-class merchandise 30.6 cents. This disparity of rates for transportation under substantially similar conditions, and which disparity increases as distance easterly from Moorhead increases, constitutes an undue preference and advantage to the eastwardly localities in Minnesota, and a corresponding prejudice and disadvantage to the interstate westwardly localities in North

Dakota. If the companies maintaining this relation of rates,
627 unfair in fact, are to continue to maintain the rates prescribed by the order, they can remove the existing undue and unjust discrimination in fact against the interstate localities in North Dakota only by reducing the interstate rates from Moorhead to localities in North Dakota to a substantial parity with those maintained from Moorhead to localities at like distance in Minnesota.

The Great Northern Company owns and operates a branch line to Noyes, 391 miles from St. Paul. The line between St. Paul and Noyes is wholly within the state of Minnesota. Conditions attending transportation of merchandise from St. Paul to Noyes are at least no more favorable than those attending transportation from St. Paul to localities in North Dakota on the main line of the company and equally distant from St. Paul. All that is claimed by complainants is that conditions are substantially alike. Prior to the taking effect of the order, the rate per cwt. of first-class merchandise for transportation on the Great Northern from St. Paul to a locality 390 miles distant and situate either in Minnesota or in North Dakota was 96 cents. The Commission made rate from St. Paul to Noyes is 68.8 cents. Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in fact.

The order of September 6, 1906, prescribes a basis of rate making. Its schedule is framed to secure a fixed relation between rates on the same class for different distances, a fixed relation between rates for the different classes for the same distance, and therefore manifestly a fixed relation between rates for different classes for different distances. These relations are so stable that, given the rate for any distance on any class, the rate for any other distance on any other class may be determined by one who knows the method upon which the schedule is constructed. An avowed purpose of the schedule is to secure equality of rates.

The Great Northern Company operates a line from St. Paul to Sioux City, Iowa, 327 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 218 miles from St. Paul—the distance from St. Paul to Jasper, the border Minnesota town.

It operates another line from St. Paul to Huron, S. D., 294 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 173 miles from St. Paul—the distance from St. Paul to Nassau, the border Minnesota town. Between St. Paul and Willmar, Minn., 102 miles from St. Paul, these lines are identical.

Under the schedule prescribed in the order, the progression of the rate—the haulage charge with increasing distance—breaks in two at a distance of 200 miles. That is to say, the haulage charge for first class (and for other classes in fixed relation) having been allowed at .98 cent for each five miles up to 200 miles is cut to .98 cent for each 10 miles beyond 200 miles, and up to 400 miles.

When the line between Minnesota and South Dakota is reached on the St. Paul-Sioux City line, the progression of the rate prescribed by the schedule is .98 cent per 10 miles for first class.

When the line between Minnesota and South Dakota is
628 reached on the St. Paul-Huron line, the progression of the rate is .98 cent per five miles of haul.

It is apparent that, unless undue and unust discrimination shall exist in the rates on one of these interstate lines as compared with the other, the same basis of making the rate, the same relation between rates for different distances and different classes must be maintained on one line as on the other, and that, notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the state of South Dakota, the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached, and that break was made within the state of Minnesota.

The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the state of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates.

Since the taking effect of the order of September 6, 1906, both the Great Northern and the Northern Pacific Companies have reduced their interstate rates on merchandise from their eastern terminals in Wisconsin and Minnesota to all localities in general in North Dakota. Such reductions have been made as a rule only to such extent as was necessary to remedy the discrimination resulting from the fact that the sum of the local rates from the eastern terminals to the border towns of Minnesota and from such border towns to the several localities in North Dakota was less than the theretofore established and then existing through interstate rates from the eastern terminals to the several respective localities in North Dakota, and not to such extent as to remedy the discrimination resulting from the fact that in most cases the general basis of rates on merchandise for traffic within Minnesota is substantially lower than that maintained in North Dakota or for traffic crossing the line between North Dakota and Minnesota notwithstanding the substantial equality of conditions. Such substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists, and constitutes undue and unjust discrimination in fact.

St. Cloud, Minn., is on the Barnesville main line of the Great Northern, and is 168 miles easterly from Moorhead, at which point this line leaves the state of Minnesota and enters the state of North Dakota. Fergus Falls, Minn., is on the same line, 56 miles easterly from Moorhead. They are each distributing centers, so declared by the Commission's order of May 3, 1907. Whether discrimination, in fact, exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and, if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls as for the same distance westerly of St. Cloud. Because they are distributing centers, rates from Fergus Falls

to points within that distance westerly should be the same as
629 from St. Cloud to points of equal distance westerly. Rates on articles covered by the order of September 6, 1906, from St. Cloud westerly within such distance of 168 miles, are substantially lower than those maintained by the Great Northern to points in North Dakota of like distance westerly of Fergus Falls. Such disparity depends only on the fact that in the case of the higher rates the state boundary line is crossed and on no other condition whatsoever; and it constitutes undue and unjust discrimination in fact, not only against the shipper at Fergus Falls, but, as well, against the consumer in the North Dakota towns in question.

Commodity Rates.

The main lines and branches of the Northern Pacific and Great Northern Companies within the states of Minnesota and North Dakota lie wholly (excepting certain limited tracts in which grain cannot be grown, such as the Bad Lands of North Dakota) within grain fields, and grain is shipped in substantial quantities from nearly all stations in these fields to Duluth, Minneapolis, and Superior.

Shipments of coal originate at the head of the Lakes—that is to say, Duluth, Minn., or Superior, Wis.—and find their destination at all localities served by the companies or either of them in Minnesota and eastern North Dakota.

Shipments of lumber originate at Duluth, Cloquet, Little Falls, and other points in Minnesota, and are destined to points throughout Minnesota and North Dakota.

Shipments of live stock originate in Minnesota, North Dakota, and eastern Montana, and go to South St. Paul or Chicago.

Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota, or Minnesota, or whether it finds its termination at one of the Minnesota terminals of the companies, or at Superior, Wis.

Conditions attending transportation are substantially the same as to all these commodities moving westwardly, whether the shipment originates at a Minnesota point or at Superior, Wis., or whether it finds its destination in Minnesota or North Dakota.

Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal, whether the shipment originates at Duluth, Minn., or at Superior, Wis., and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for the transportation of lumber, whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportation of live stock, whether the shipment originates in Minnesota, North Dakota, or eastern Montana involves an undue and unjust prejudice and disadvantage, in fact, against the localities subject to the higher basis of rates, and an undue and unjust prefer-

ence and advantage in fact to the localities given the lower basis. Establishing the rates prescribed by chapter 232, Gen. Laws
630 1907 (Rev. Laws Supp. 1909, §§ 2007—11 to 2007—17), and maintaining these rates for transportation wholly within Minnesota simultaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota, and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana, would involve on the part of the Northern Pacific and Great Northern Companies undue and unjust discrimination in fact against shippers, receivers, and localities transacting the interstate business, and would seriously impair the interstate business of the carriers. If the companies shall be compelled to maintain within Minnesota the rates prescribed by chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota, and Minnesota points and Superior to a substantial parity with the basis prescribed by chapter 232, in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business, as well as in order to protect the interstate business of carriers against serious impairment.

Such reduction must be substantial. For example, the present rate on soft coal from Duluth to Wahpeton is $2 per ton. The rate prescribed by chapter 232 from Duluth to Breckenridge is $1.31 per ton. That act provides that a minimum car load of soft coal shall be 30,000 pounds or 15 tons. So that the reduction that will be necessary to avoid discrimination against the interstate locality in the rate on soft coal will be $10.35 per minimum car load.

Duluth, Minnesota, Superior, Ashland, Green Bay, Manitowoc, Sheboygan, and Milwaukee, Wis., Gladstone, Mich., Chicago, Ill., the Peoria, Ill., district, the Springfield, Ill., district, the Streator, Ill., district, and the La Salle, Ill., district, are all competitive points for the distribution of coal into the state of Minnesota.

For many years rates on coal from the various distributing points to localities in southern Minnesota have borne such a relation as to admit of free competition of the various distributing points and of the carriers serving them.

If the rates on coal prescribed by chapter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan, and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota, unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by chapter 232 from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed, unless rates shall be similarly reduced from these various distributing centers to localities in these two districts.

Interstate rates on cattle, hogs, sheep, and coarse grain would be affected by the rates prescribed by chapter 232 in the same manner as rates on wheat and coal.

631 Under the milling in transit privileges, so called, owners of wheat at any point in Minnesota, North Dakota, or South Dakota may pay rates equal to the sum of the rate between the point of shipment to Minneapolis and the proportional rate from Minneapolis to Chicago (for many years and at present the sum of 7.5 cents per cwt.), have it milled at Minneapolis, and within a limited period of time forwarded to Chicago as flour.

In order to allow mills located at other towns in Minnesota to compete with Minneapolis, a like milling in transit privilege has been accorded owners of wheat to ship via such other towns as via Minneapolis, and mills have been established in many such towns under a guaranty that rates into the towns in which such mills are located on wheat in and flour out to Chicago should not exceed the rates from the same points to Chicago via Minneapolis with the milling in transit privilege. Chapter 232, Gen. Laws 1907, substantially reduces rates on wheat within Minnesota. The result will be, if that law takes effect, that the milling in transit rate from points in Minnesota via Minneapolis to Chicago will be automatically reduced substantially. Unless, then, all interstate rates between Minnesota points and Chicago via some interior mill town and with a milling in transit privilege shall be reduced to a substantial parity with the reduced milling in transit rate to Chicago via Minneapolis, Minneapolis will have a substantial advantage in its interstate rates on wheat over the various mill towns in the interior of the state, and wheat in general will as a result of this advantage go to Minneapolis.

Passenger Rates.

Prior to the taking effect of chapter 97, Gen. Laws 1907 (Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2), the general basis of rates for the transportation of passengers between any two points on the Northern Pacific system had been for some years 3 cents per mile for passengers of 12 years of age and over, and 1½ cents per mile for passengers under 12 years of age.

Chapter 97, Gen. Laws 1907, prescribes as a maximum for transportation of passengers wholly within the state of Minnesota 2 cents per mile for passengers of 12 years of age or over and 1 cent per mile for passengers under 12 years of age.

After the maximum rates prescribed by chapter 97 were installed, the sum of the locals between Moorhead and other Minnesota points and Moorhead and points westerly thereof was less than the then existing interstate rates between Minnesota points and points westerly thereof.

The result of this disparity between the through interstate rate over Moorhead and the sum of the locals over Moorhead was this: In the first month after the taking effect of Chapter 97, the revenue for passenger business on the Northern Pacific between Moorhead and other Minnesota points increased 647 per cent. over that for the correspond-

ing month of the preceding year, while, eliminating Moorhead business, the revenue for passenger business within the state decreased 2 per cent. In June, 1907, the second month after the taking
632 effect of chapter 97, there were sold by the Northern Pacific Company 4,037 tickets between St. Paul or Minneapolis, on the one hand, and Moorhead or East Grand Forks, on the other, as compared with only 172 such tickets in the corresponding month of the year before; and in June, 1907, there were sold only 173 tickets between St. Paul or Minneapolis, on the one hand, and Grand Forks and Fargo, on the other, as compared with 984 such tickets in the corresponding month of the year before. In May and June, 1906, only one cash fare was collected on a train between Moorhead and St. Paul or Minneapolis. In those months in 1907 there were 1,168 full cash fares and 82 cash half fares so collected.

Thus the necessary, immediate, direct effect of the operation of chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead.

Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the company, one of which should cover the mileage in Minnesota, discrimination in fact against the interstate passenger through Moorhead on the Northern Pacific still existed, and was practiced. It existed against a passenger who, applying for a through ticket, did not know that the sum of the locals on Moorhead was less than the through rate, against the passenger with a trunk which he could not check through unless on a through ticket, and against a passenger who was compelled to use a sleeping car.

As soon as it reasonably could do so, the Northern Pacific remedied this discrimination by reducing all its interstate fares for passenger transportation through Moorhead to an amount no greater than the sum of the locals over Moorhead. Meantime and before tariffs establishing the new reduced interstate rates over Moorhead had been filed, the state of Wisconsin had enacted a two cents per mile passenger fare law, and the state of North Dakota a two and one-half cents per mile law. The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile for the mileage in North Dakota. And the rates newly established by the Northern Pacific jointly with other companies for passenger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota.

These reductions in rates were compelled by the necessary, immediate, and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the

companies might transact interstate passenger business freely and without impairment of volume.

633 Prior to the taking effect of the respective orders complained of and of the two-cents maximum passenger fare law, the tariffs of the Great Northern and Northern Pacific Companies for the transportation of passengers or merchandise in Wisconsin, Minnesota, North Dakota, and South Dakota were fair as between the different states, and the local tariffs in each state were fair as compared with the interstate tariffs between such states or any two thereof; and the tariffs now maintained by the companies and each of them for the transportation of commodities covered by chapter 232 are fair as between these states, and the local tariffs in each state are fair as compared with the interstate tariffs between such states or any two thereof.

The installation of the rates prescribed by the respective orders destroyed that fairness as to merchandise rates, the installation of the two-cents passenger rate destroyed it as to passenger rates, and the installation of the rates prescribed by chapter 232 would destroy it as to rates on commodities covered by it.

It is wholly impossible for carriers situated as are the Great Northern, Northern Pacific, and Minneapolis & St. Louis Companies to maintain materially lower rates or a materially lower basis of rates or a different classification of subjects of transportation, or a different relation between rates for different classes of merchandise, for traffic wholly within Minnesota, than for that between Minnesota and any of its neighboring states without unjust and undue discrimination in fact against the localities in the neighboring states, and without serious impairment of the volume of the interstate business of the carriers. Such lower basis of rates within Minnesota than between Minnesota and its neighboring states would result in the promotion of the growth and prosperity of localities in Minnesota at the expense of localities in neighboring states and the enhancement of the value of property in Minnesota, and the serious impairment of the value of the property of all business men, as well as that of the carriers themselves in the neighboring states.

Duluth and Superior, Grand Forks and East Grand Forks, Fargo and Moorhead, and Wahpeton and Breckenridge are so situated that each pair must be considered for the purpose of rate making as one locality. Both as a practical matter of the operation of a railroad and in order that undue and unjust discrimination as between the members of any pair may be avoided, each city of each pair must have rates equal to those accorded to the other city. If different rates, a different classification, or a different basis of rates be lawfully prescribed by one regulating power in or out of one city of any pair to those prescribed by another regulating power in or out of the other city of the pair, the carriers serving them both must, in order to avoid undue and unjust discrimination in fact as between them as well as to preserve their own power to transact business with each of them, adopt for each city the lower rates or basis of rates, or classification prescribed for either city.

If it should be necessary for the companies involved, in order that

discrimination may be avoided, or in order that the companies may preserve the volume of their respective businesses in interstate
634 transportation free from impairment in volume, to install for their interstate business a basis of rates no higher than these respectively prescribed in the acts and orders complained of, and to extend the rates for their interstate long-haul business upon the principle provided in said acts and orders, the result will be a substantial diminution in the revenues of the companies from their interstate business. For example, the diminution in the revenue of the Northern Pacific Company for the year ending June 30, 1906, the last fiscal year prior to the taking effect of the order of September 6, 1906, from its interstate business in transportation of commodities covered by chapter 232 alone, if the basis prescribed by chapter 232 had been applied to its rates for such interstate business, would have been $4,193,283.04; and the loss in such interstate revenue for such year for transportation of merchandise covered by the order of September 6, 1906, if the basis prescribed by the order had been applied to its rates for such interstate business, would have been $4,119,761.96. The loss in its interstate business from passenger transportation, if the two-cents maximum rate had been applied during such year, would have been $1,444,955.35, or a total loss, on account of the acts and orders complained of, of $9,758,000.35.

If, in order to prevent discrimination as between different states, it shall be necessary for the companies involved to apply for local business within the respective states, the same basis of rates as those prescribed for business local to Minnesota by the acts and orders respectively complained of, the loss in revenue to the companies involved will be substantial. For example, in the year 1906 the loss in revenue of the Northern Pacific Company, if the basis prescribed by chapter 232 had been applied to its local business in transportation of commodities covered thereby in other states, would have been $198,540.51; and its loss in revenue, if the basis of rates prescribed in the order of September 6, 1906, had been applied to its local business in other states for transportation of merchandise covered thereby, would have been $952,644.83, or a total loss on freight of $1,151,185.34; and, if the two-cents maximum passenger rate had been applied to its local business in other states, the loss in revenue would have been $990,908.82, or a total loss, under the acts and orders complained of, of $2,142,094.16.

The facts which have been recited were found by the master, and the foregoing statement of them is, with rare exceptions, in his clear and concise language. Many exceptions are leveled at these findings, but they are sustained by clear and convincing evidence, and the only question remaining here is: Do they justify the conclusion that the effect of the acts and orders prescribing the Minnesota maximum fares and rates is to impose a substantial burden upon or to regulate or to discriminate against interstate commerce, or to create unjust discrimination between interstate localities? Counsel for the defendants insist that this question should be answered in the negative.

They argue that the prescription and enforcement of these fares and rates cannot constitute an unconstitutional burden upon or inter-

ference with interstate commerce because the orders and acts relate to commerce within the state only and the state has power to
635 regulate its purely local commerce. This contention, however, cannot be sustained because, as has been demonstrated in the earlier part of this opinion, if, by their natural or necessary operation, these acts and orders have the effect substantially to burden interstate commerce, they fall under the ban of the Constitution and beyond the power of the state whatever their terms or the intent of their makers may have been.

They say that, while the reduction of the local fares and rates may induce the companies to reduce their interstate rates and fares across the borders of the state to a parity with the local rates, this is the voluntary act of the companies not directly required by the laws and orders. There are, however, known and inexorable laws of commerce, and one of them is that transported articles will move at the lowest available rates. Reduce local fares and rates so that fares and rates in interstate commerce across the borders of the state are substantially higher than the sums of the locals over the Minnesota stations on or near the state boundaries and the companies must reduce their interstate fares and rates on that portion of their interstate commerce affected by the sums of the locals over the Minnesota borders to a substantial parity with the sums of the locals or their interstate commerce affected thereby will unavoidably become intrastate commerce and move at the sums of the locals. There is nothing voluntary on the part of the companies in the loss or burden imposed upon them by these reductions. That they must suffer whether they reduce their interstate rates or maintain them and permit the transformation of their affected interstate commerce into intrastate commerce by rebilling and local contracts so that it can pass at the sums of the locals. The loss of the difference in revenue between that derived from their former interstate rates and that derived from the sums of the locals is a direct and unavoidable burden upon their interstate commerce imposed by the acts and orders stated which the companies may not by any device avoid.

Moreover, the acts and orders making these intrastate reductions necessarily operate to discriminate against interstate commerce and the right of the companies to carry it on, and in that way constitute a direct burden upon such commerce. Mr. Justice White said in the Pullman Company's Case, 216 U. S. at page 65, 30 Sup. Ct. at page 236 (54 L. Ed. 378), that, though a power exerted by a state may not abstractly impose a direct burden on interstate commerce, yet such exertion will be a direct burden upon such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. If the companies exercised their right to maintain and did maintain their former interstate rates upon that portion of their interstate commerce affected by the local Minnesota rates, they lost to local commerce that interstate commerce, because it passed by rebilling and local contracts at the sums of the locals. This necessary effect of the local maximum rates was a direct discrimination against interstate commerce and the right to conduct it, and hence a direct

burden upon that commerce. If, on the other hand, to avoid this discrimination the companies reduced their rates, that reduc-
636 tion was a like direct burden, and no course was open to them whereby they could exercise their constitutional right to conduct their interstate commerce free from the direct regulation thereof effected by these acts and orders.

Another vicious and inevitable effect of these acts and orders is the unjust discrimination in fares and rates between localities in Minnesota and those beyond its borders which they effect. Moorhead, Minn., and Fargo N. D., are practically the same distance from St. Paul, Minneapolis, and Duluth, respectively. They have long received, and they ought to continue to receive, the same fares and rates in and out. This is also true of Duluth, Minn., and Superior, Wis.; Breckenridge, Minn., and Wahpeton, N. D.; East Grand Forks, Minn., and Grand Forks, N. D. These acts and orders reduced the fares to and from the Minnesota towns of these pairs from and to other Minnesota points 33⅓ per cent., and the freight rates from 7 per cent. to 25 per cent., while the former interstate fares and rates from and to the other towns of the pairs remained in effect, as to commodity rates under the protection of the injunction of this court, and would have continued in effect in the matter of merchandise rates and the passenger fares had not the prohibition of discriminations between localities by the interstate commerce law and the laws of trade which have been considered compelled the companies to reduce their interstate rates to parity with the local rates prescribed. The discrimination thus wrought by these acts and orders between the towns mentioned on the state lines is but illustrative of the undue preference and advantage the local reductions gave to Minnesota cities and towns, and the unreasonable prejudice and disadvantage to which they subjected the towns and the cities of other states similarly situated in their vicinity.

Congress by the "act to regulate commerce" (24 Stat. 379) forbade the companies to make or give any undue or unreasonable preference or advantage to any party or locality, or to subject any party or locality to any unreasonable prejudice or disadvantage in any respect whatsoever, and the prevention of the discrimination thus prohibited was one of the main purposes of this legislation. The first section of the act, however, contained this provision:

"Provided, however, that the provisions of this act shall not apply to transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state, and not shipped to or from a foreign country from or to any state or territory aforesaid."

The result was that the act of Congress forbade, and the acts and orders of the officers of Minnesota compelled, this discrimination between localities under the penalty of the surrender by the companies of a substantial part of their interstate commerce or of the revenue therefrom. Counsel for the defendants argue, however, that this radical discrimination is not forbidden by the interstate commerce law because it is a discrimination wrought, not by an undue difference between intrastate rates of which they say the state has exclusive

jurisdiction, nor by an undue difference between interstate rates of which they admit the nation has exclusive jurisdiction, but by an undue difference between intrastate rates and interstate rates, and they contend that over the discrimination thus wrought neither
637 state nor nation has any power. The argument, however, again disregards the broad and fundamental difference between the power of the state over intrastate commerce and the power of the nation over interstate commerce. The state may regulate its intrastate commerce so far only as the exercise of its power does not substantially burden or regulate or discriminate against interstate commerce, but no farther. A state may not prohibit or regulate discrimination between interstate and intrastate rates in such a way as substantially to burden or regulate interstate commerce, as, for instance, by the prohibition of a higher charge or rate for a short haul wholly within the state than for a long haul that includes the short haul and extends into another state, because such action burdens and regulates interstate commerce. Louisville & Nashville R. R. Co. v. Eubank, 184 U. S. 27, 42, 43, 22 Sup. Ct. 277, 46 L. Ed. 416. By the same mark, because it is a direct regulation of interstate commerce, the nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the nation by the Congress and its courts may affect and regulate intrastate commerce. United States v. Colorado & N. W. R. Co., 157 Fed. 321, 331, 85 C. C. A. 27, 37, 15 L. R. A. (N. S.) 167; Brown v. Maryland, 12 Wheat. 419, 448; Gibbons v. Ogden, 9 Wheat. 1, 209, 210, 6 L. Ed. 23; Gulf, Colorado, etc., Ry. Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910; Interstate Commerce Commission v. Detroit, etc., Ry. Co., 167 U. S. 633, 642, 17 Sup. Ct. 986, 42 L. Ed. 306; State Freight Tax Case, 15 Wall. 232, 275, 280, 21 L. Ed. 146; Pensacola Telegraph Co. v Western Union Telegraph Co., 96 U. S. 1, 8, 24 L. Ed. 708; Chy Lung v. Freeman, 92 U. S. 275, 280, 23 L. Ed. 550; Railway Co. v. Husen, 95 U. S. 465, 471, 472, 473, 24 L. Ed. 527; Hall v. De Cuir, 95 U. S. 485, 488-490, 497, 498-513, 24 L. Ed. 547; Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 736, 737, 5 Sup. Ct. 739, 28 L. Ed. 1137; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 479, 480, 481, 484, 485, 488, 489, 490, 491, 507, 508, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347; Lyng v. Michigan, 135 U. S. 161, 166, 10 Sup. Ct. 725, 34 L. Ed. 150; Norfolk, etc., Ry. Co. v. Pennsylvania, 136 U. S. 114, 115, 118, 120, 10 Sup. Ct. 958, 34 L. Ed. 394; Crutcher v. Kentucky, 141 U. S. 47, 57, 58, 59, 11 Sup. Ct. 851, 35 L. Ed. 649; Osborne v. Florida, 164 U. S. 650, 655, 17 Sup. Ct. 214, 41 L. Ed. 586; Caldwell v. North Carolina, 187 U. S. 622, 623, 23 Sup. Ct. 229, 47 L. Ed. 336. "This power," said Chief Justice Marshall, "like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified ob-

jects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its Constitution the same restrictions on the exercise of the power
638 as are found in the Constitution of the United States." Gibbons v. Ogden, 9 Wheat. 1, 189,194,197, 6 L.Ed. 23; Lottery Case, 188 U. S. 321, 346, 347, 359, 23 Sup. Ct. 321, 47 L. Ed. 492. The power therefore to prohibit the railroad companies from making or permitting any undue discrimination between localities and parties by unreasonable differences between intrastate and interstate rates was vested in Congress, and no acts or orders of the state or its officers could justify such a discrimination. If, as the Supreme Court held in the Eubank Case, a state has no authority to suppress such a discrimination, much less has it the power to create and maintain it.

But counsel insist that, if Congress had the power to forbid this discrimination, it did not exercise it because it declared in the proviso to section 1 that the provisions of the interstate commerce act should not apply to transportation wholly within one state. But the main object of the act was to prevent every undue discrimination between parties and between localities. When it was enacted there was a crying evil in such discriminations, an insistent public demand for the remedy thereof, and a determined effort by the legislators to make the prohibitions of such discriminations as broad, searching, and effective as the Congress had the power to make them. It had, as we have seen, ample authority to forbid discriminations wrought by differences between intrastate and interstate rates, but none to prohibit discriminations caused by differences in rates for transportations wholly within a state. The act prohibits any undue discrimination in any respect whatever between localities under similar circumstances and conditions by any common carrier subject to its provisions. In the light of these facts, the natural and reasonable construction of the proviso in section 1 is that it was inserted out of abundance of caution to make sure that the broad terms of the act did not go beyond the constitutional power of the Congress and directly regulate intrastate commerce more than was necessary completely to regulate interstate commerce, and that it has no farther effect upon the subject of discrimination now under discussion. The evil the act was passed to remedy, the main purpose of its passage, the public demand for a prevention of all discriminations, the patent efforts of the legislators to meet this demand, and the broad terms of the prohibitions themselves compel the conclusion that the Congress intended to exercise, and that by this act it did exercise, its constitutional power to prevent discriminations of the character here in question to its utmost extent, and that the companies were and are prohibited thereby from making or maintaining the unjust discriminations between localities which the maintenance of their former lawful interstate fares and rates and the intrastate rates prescribed by the acts and orders of the officers of the state would necessarily effect. Reliance Textile & Dye Works v. Southern Ry. Co., 13 Interst. Com. R. 48, 54.

The next suggestion is that, if the prohibition of the interstate commerce act applies to discriminations between intrastate and interstate rates, it applies only when the transportation is under substantially similar circumstances and conditions and the acts and orders in question render the circumstances and conditions under which the intrastate rates are charged dissimilar from those which condition the interstate rates. But state laws and orders effecting discrimi-
639 nations forbidden by acts of Congress cannot be held by themselves to create such dissimilar conditions as to warrant the maintenance of such discriminations.

Finally, counsel cite, to overcome the proof of the substantial burden and the direct regulation of interstate commerce effected by the acts and orders in this case, with which this record teems, these words from the opinion of Mr. Justice Brewer in Ames v. Union Pacific Ry. Co. (C. C.) 64 Fed. 172:

"Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates, and make them conform to the local rates prescribed by the statute; but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates, any more than an act of Congress prescribing interstate rates would legally work a change in local rates. Railroads cannot plead their own convenience, or the effect of competition between themselves and other companies, in restraint of the otherwise undeniable power of the state."

The reduction of local rates does not interfere with interstate rates "as a matter of law," yet it may do so as a matter of fact. Whether or not the general and sweeping reductions in local rates in Minnesota necessarily interfere with interstate rates and interstate commerce is in this case, as it must be in every case, a question of fact. The facts which determine that question in this case have been set forth in this opinion at great length, because it is upon them, and not upon legal inferences, that the answer to the question, whether or not the effect of the necessary operation of the acts and orders challenged is substantially to burden interstate commerce, now rests. Those facts are that it was not for "their own convenience," but at great inconvenience and loss, not on account of the "effect of competition between themselves and other companies," but because these acts and orders, the prohibition of discrimination between localities by the interstate commerce act and the laws of trade, forced them to do so, that the defendants reduced their interstate commerce rates to a parity with the local rates and submitted to the loss of interstate revenue this action entailed. The opinion of Mr. Justice Brewer in the Ames Case is inapplicable to the cases in hand because no such array of condemnatory facts was ever submitted to him in that case, and it is perhaps not too much to say that no case has been found in the books in which any such proof of the unavoidable effect of general reductions of intrastate rates to substantially burden and directly regulate interstate commerce has ever been presented.

Minnesota, North Dakota, South Dakota, and Wisconsin embrace a vast region 1,000 miles in extent, traversed by the railroads of the defendant companies, which produces the same things shipped to the same markets and consumes the same things bought in the same markets. The conditions of the transportation of passengers and freight in interstate traffic and alsa in intrastate traffic have been and are identical, and a relative, fair, and equable relation between fares and rates in interstate commerce and fares and rates in intrastate commerce had been maintained before the acts and orders here challenged were made. The railroad companies had established
640 and were collecting their interstate fares and rates pursuant to the act to regulate Commerce enacted by the Congress of the United States. Those fares and rates were lawful, hence presumptively reasonable, and neither the officers of the state of Minnesota nor any court, state or federal, could legally adjudge them unreasonable until they had been denounced by the Interstate Commerce Commission, Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S., 426, 27 Sup. Ct. 350, 51 L. Ed. 553. The fares and rates and the traffic in intrastate commerce were so inextricably interwoven with the fares and rates and the traffic in interstate commerce that a general and substantial reduction of the fares and rates in either by its necessary operation compelled a similar reduction in the other, because the interstate commerce act forbids the discrimination that would otherwise result and because traffic will move only at the lowest available rates. The subject of the fares and rates in interstate commerce through this region is national in its character and capable of regulation by uniform rates, and the railroad companies are therefore free to make and regulate them subject only to the orders of the Interstate Commerce Commission. The officers of the state of Minnesota by the acts and orders challenged made a general and sweeping reduction of 33⅓ per cent. in passenger rates within that state, of 20 per cent. to 25 per cent. in rates on general merchandise, of 7.37 per cent. on grain, coal, live stock, and lumber, and of 13.58 per cent. on in-rates to distributing points.

The effect of the necessary operation of these acts and orders was substantially to burden and directly to regulate the interstate commerce of the companies by causing the transformation of that part of their transportation upon which their former interstate rates were higher than the sums of the locals over the border towns in Minnesota into local commerce at those sums, or by causing the companies to reduce their interstate fares and rates affected by the reduced local fares and rates to a parity therewith. This effect was unavoidable because the interstate commerce law prohibited the companies from giving to Minnesota towns and cities the undue and unreasonable advantage and from subjecting the cities and towns of other states in the vicinity to the undue and unreasonable disadvantages which a maintenance of their former interstate fares and rates and the prescribed local fares and rates would have wrought, and because passengers and freight will move at the lowest available rates.

This effect was not like that of the directions concerning the movements of particular trains, the inspection of animals to guard against disease, the reduction of intrastate rates on one or a few articles of commerce, and similar regulations which were sustained in the cases in the earlier part of this opinion and in others of like character, because their effect upon interstate commerce was so incidental and remote as to be negligible. The effect of these acts and orders was substantial, direct, controlling, and compelling. They are general and sweeping in their terms, they reduce the fares and rates on the great body of intrastate commerce in the state of Minnesota from 7 to 33⅓ per cent., and their inevitable effect is directly and unavoidably to regulate much of the
641 interstate commerce of the defendant companies and unavoidably to cause each of them great loss of revenue therefrom.

No case has been found in the books in which the facts disclose a more substantial burden imposed upon interstate commerce by the acts or orders of the officers of any state than that which the effect of the necessary operation of these acts and orders entails upon the interstate commerce of these companies. If in the early proceedings in the Northern Pacific Case the Supreme Court was moved to say, of the issue whether the necessary effect of these acts and orders was to interfere with and to regulate interstate commerce, "the question is not, at any rate, frivolous," how, now, that their necessary effect upon that commerce has been indisputably proved to be not only general and substantial, but controlling and compelling, may they escape the ban of the Constitution? If one state might by such radical reductions of its local fares and rates below legal interstate fares and rates constitutionally use the laws of trade and the prohibition of discriminations in the interstate commerce law to force like reductions of interstate rates, all states might do so, and the power of the states to regulate fares and rates in interstate commerce would be supreme and that of Congress and the Interstate Commerce Commission inferior and futile. Such does not seem to be the law.

Each of the acts and orders challenged has the natural and necessary effect substantially to burden and directly to regulate interstate commerce, to create undue and unjust discriminations between localities in Minnesota and those in adjoining states, and it is unconstitutional and void.

The master also found that the maximum state rates prescribed by these acts and orders produced incomes sufficient to pay the cost of earning them, taxes and just returns upon the real values of the Minnesota properties of the defendants respectively used to carry on their intrastate commerce in that state. The actual earnings, taxes, and cost of conducting transportation during the year ending June 30, 1908, the year when the fares and all the rates, except the commodity rates, were in actual operation, were proved, and the master found that the net freight income for that year of the Northern Pacific Company from its Minnesota intrastate freight business yielded an annual return of only 1.941 per cent. on the value of its

property used to produce that income, and that if the commodity rates had been in operation this percentage would have been still smaller, that its net income from its intrastate passenger business was sufficient to yield an annual return of only 4.2 per cent., and its net income from all its intrastate business in Minnesota an annual return of only 2.909 per cent. of the values of its property assignable thereto respectively. He reported that the net income of the Great Northern Railway Company from its Minnesota intrastate freight business was sufficient to yield an annual return of only 5.468 per cent. of the value of its property assignable to that business, and if the commodity rates had been in force the return would have been less than 5 per cent., that its net income from its Minnesota passenger business yielded a return of only .925 per cent. on the value of its property assignable to that business, and that the net income from all its Minnesota intrastate
642 business was sufficient to yield an income of only 3.359 per cent. on the value of its property assignable thereto. His report is that, if the acts and orders of which complaint is made had been in force during the fiscal year 1907, the year to which the proof is especially addressed in the case of the Minneapolis & St. Louis Company, the net income derived from that company's Minnesota intrastate business would have been sufficient to pay an annual return of only 2.93 per cent. on the value of its property assignable to that business, that the net income derived from its Minnesota passenger business would have yielded an annual income of only 1.79 per cent. on the value of its property assignable to that business, and that its Minnesota net income from intrastate freight and passenger business would have been sufficient to earn an annual return of only 2.47 per cent. on the value of its property assignable to all its Minnesota intrastate business.

All the Minnesota property of each of these companies devoted to transportation had always been and is used at the same time to conduct both intrastate commerce and interstate commerce. In determining whether or not the fares and rates challenged are confiscatory, the Minnesota intrastate commerce of these companies must be considered by itself. That commerce may receive the benefit of none of the revenue and must bear the burden of none of the cost of interstate commerce. The portion of the value of all Minnesota property of each of these companies which is chargeable with the economic duty to produce a just return by means of the intrastate commerce of that company must therefore first be ascertained, for that is the basic measure of the reasonableness of the return produced by the Minnesota fares and rates and the criterion for the trial of the issue confiscation vel non. In the ascertainment of the necessary facts and in the determination of this issue the master pursued this approved method in the case of each company. Take the Northern Pacific Company for example. He first found the real value of that portion of its Minnesota property devoted to transportation in Minnesota during the year ending June 30, 1908, to be $90,204,545, he apportioned this value between its freight business and its passenger business in that state that was conducted

by the use of the property thus valued on the gross earnings basis, and in that way found $66,445,570 thereof assignable to its freight business and $23,758,975 assignable to its passenger business. On the same basis he divided the values thus respectively assigned to freight business and passenger business between the interstate business and the intrastate business of the company conducted by the use of the property so valued, and in that way apportioned $10,867,837 thereof to the company's intrastate freight business, and $8,159,782 thereof to its intrastate passenger business. From the evidence produced he found that the total freight revenue earned by the use, during the year ending June 30, 1908, of the company's Minnesota property valued, was $9,823,508.35, and that the total passenger revenue was $3,512,538.52. These earnings he divided between intrastate commerce and interstate commerce and found that the intrastate freight earnings were $1,606,771.26, and the intrastate passenger earnings were $1,206,333.09. He found
643 from the evidence that the cost of the freight business conducted by the use of the property valued was $5,343,718.25, and the cost of the passenger business was $2,311,631.95. He divided the freight and passenger cost respectively between the interstate commerce and the intrastate commerce and found that the cost of the intrastate freight business was $1,355,273.82, and the cost of the intrastate passenger business was $863,325. He deducted the annual intrastate freight cost from the annual intrastate freight earnings, and thus found the annual net intrastate freight income, which, divided by the value assigned to the intrastate freight business, produced the 1.941 per cent. which he found to be the annual return which the rates challenged yielded upon the value of the Minnesota property of the Northern Pacific Company used to conduct it. In the same way the annual return upon the value assigned to the intrastate passenger business of this company was found, and the same method was pursued in ascertaining the returns yielded to each of the companies by the assailed fares and rates. His findings upon all these matters are terse, clear, and complete. They set forth the values found, the values assigned, the gross earnings, the net earnings, the cost found, the cost assigned, and where they are not drawn directly from the testimony of witnesses they carefully detail the methods and the computations by which they were reached. These findings are drawn from evidence which the master has reported to the court and which fills 19 printed volumes. Exceptions to them and to the report have been taken, and counsel for the defendants by brief and argument seem to have presented every contention and suggestion in opposition to them that learning, ingenuity, and ability enable man to conceive.

Fortunately it is unnecessary to enter upon any review of the authorities, or any discussion of the rules of law, by which the validity, under the fourteenth amendment to the Constitution of the United States, of the acts and orders which prescribed the fares and rates in question must be tried. They are presumed to be reasonable and valid because the Legislature and the Commission have the power to

prescribe fares and rates of this nature on condition that they do not have the effect to deprive the owners of any property whose use is subjected to them, and the legal presumption is that the officers of the state have faithfully discharged their duties and acted within the constitutional limits of their power. Proof that they have not done so or that their acts and orders are violative of the federal Constitution must be clear.

It is, however, beyond the power of a state or of its officers to establish or maintain fares and rates the effect of the enforcement of which is equivalent to the taking of the property of public service corporations for public use without compensation, unless justice to the public requires such a confiscation. Fares and rates must be just, both to the people and to the carrier. In the case in hand justice to the people does not demand that the property of the defendant companies shall be taken for their benefit without just compensation, and fares and rates which do not yield a reasonable return upon the real value of the property of the railroad companies subjected to them are confiscatory in their nature, and the acts and orders which establish or maintain them are unconstitutional
644 and void. "What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public." Smyth v. Ames, 169 U. S. 466, 547, 18 Sup. Ct. 418, 42 L. Ed. 819; San Diego Land Co. v. National City, 174 U. S. 739, 757, 19 Sup. Ct. 804, 43 L. Ed. 1154; San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 442, 23 Sup. Ct. 571, 47 L. Ed. 892; Willcox v. Consolidated Gas Co., 212 U. S. 19, 41, 29 Sup. Ct. 192, 53 L. Ed. 382; Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 495.

Numerous exceptions are leveled at the master's findings of the values of the Minnesota properties of the companies used to conduct their intrastate transportation on the ground that they are too high. Speaking generally the same classes of evidence were introduced by the respective parties in the case of each of the companies and what will be said of the proof and the finding in the case of the Northern Pacific Company is applicable to the proof and the finding in the cases of the two other companies. Evidence of the cost of reproduction of the Minnesota property of each of the companies, of the original cost of acquisition and construction thereof, and of the average market value of the stocks and bonds of each of the companies for a reasonable period of time prior to June 30, 1908, was introduced before and considered by the master. He found the value of the Minnesota property of the Northern Pacific Company devoted to public use to be $90,204,545. He found the average market value of the stocks and bonds of the company for a period of five years was $509,824,723. The track mileage of the company in Minnesota was 21 per cent. of the track mileage of the Northern Pacific system, and hence the value of the Minnesota property of the company upon this basis was $107,630,191, nearly $17,000,000 more than the value found by the master. In the absence of competent evidence segregating the property of a railroad company devoted to transportation

from its other property, all its property represented by the market value of its stocks and bonds is presumed to be devoted to public use. Atchison, Topeka & Santa Fé Ry. Co. v. Sullivan, 173 Fed. 456, 466, 97 C. C. A. 1, and the cases there cited. There was evidence in this case, however, that a considerable portion of the property of the Northern Pacific Company represented by the value of its stocks and bonds was not devoted to transportation; but there was no reliable evidence of the value of this property or of its relative value to the value of all the property of the company. For this reason the master rightly and unavoidably concluded that the market value of the stocks and bonds was not a sound premise from which to deduce the value of the Minnesota property of the company devoted to public use. Counsel for the defendants assail this conclusion and found an argument for a lower valuation upon this market value of the stocks and bonds and a statement in a monthly balance sheet of the company which they introduced in evidence and which contained a statement of certain accounts of the company and of the book value of certain securities that appear from that statement not to be devoted to public use and to be held by the company. But this balance sheet was not an admission of the company against interest, the record con-
645 tains no competent evidence of the value of these securities or of the accounts, and therefore the contention of counsel here is without foundation. For similar reasons the market values of the stocks and bonds of the other two companies present no credible evidence that the values found by the master were excessive.

The master found the original cost of the acquisition and construction of the entire railroad systems of each of the companies and the proportion thereof assignable on a track mileage basis to Minnesota. The amounts thus found prove to be much less than the values ultimately found by the master, and for this very good reason: These railroads were pioneers; they were built in large part over the prairies of Minnesota before they were settled and before many of the existing towns, villages, and cities along their lines came into existence. A large part of the right of way of the Northern Pacific Company was granted to it by the nation. The cost of rights of way from 5 to 40 years ago through wild lands, and through towns and villages whose population and the value of the property in which have since been multiplied by from 2 to 10, is obviously no criterion of the value of those rights of way in 1908, when they were used under these fares and rates and when agricultural lands in Minnesota were worth from $35 to $100 an acre, and rights of way and lands for yards and sites for stations in cities like St. Paul and Duluth have wonderfully increased in value. It is a fair return upon the reasonable value of their Minnesota property in 1908 to which these companies were entitled, and the cost of that property at times varying from 5 to 40 years ago may be some evidence; but it is certainly no criterion of its value in that year. In view of these facts the master rightly decided that the cost of reproducing this property new was a more rational and reliable measure of its real value than the original cost of its acquisition and construction or the market values of

the stocks and bonds of the companies, and upon that basis he made his findings.

The Railroad Commission seems to have reached the same conclusion at an earlier date, for in the first part of the year 1906, before these suits were commenced, they had employed Mr. Dwight C. Morgan as their engineer, and had instructed him and had requested the railroad companies to find the respective values of their railway properties in Minnesota on the basis of the cost of their reproduction new. This basis is described in the instructions of the Commission to the companies under date of March 12, 1906, in these words:

"In estimating the value of the physical, real and personal property of the railway companies in the state of Minnesota, an estimate of the cost of reproducing them new is deemed essential as the prime factor. In respect to real estate and construction, this prime estimate is to be made as though the existing railways were not constructed and the regions through which they now extend were occupied as now, by the settlements, improvements, and varied industries. * * * The present value of the physical properties of the railways will be obtained by deducting from the cost of reproduction of deteriorations by time and use, on the date corresponding to that of the estimated cost of reproduction."

A schedule of about 40 items originally suggested by the Commission, and perhaps subsequent somewhat modified was used
646 by both parties in these cases, and their evidence was directed to the values of these items on the basis of the cost of their reproduction new.

The first and largest item on the schedule was "lands for right of way, yards and terminals." In the case of the Northern Pacific Company the evidence on behalf of the complainant tended to show that the cost of reproducing this item was about $25,000,000. The claim of counsel for the Commission now is that the value of this item does not exceed $9,498,099.27, and the master found that the cost of its reproduction and its value were $21,240,562. In the testimony the item is divided into lands for rights of way, yards, and terminals in St. Paul, Minneapolis, and Duluth, which for brevity will be called "terminals," and other lands for rights of way, yards, and sites for stations through the other cities, towns, and villages and through the country, which will be termed "lands outside of terminals." The evidence for the defendants regarding this item consists of an estimate made and verified by Mr. Morgan and corroborating purchases and sales. Mr. Morgan had never bought and sold any real estate, except his homestead, nor was he acquainted with the value of real estate in general. To ascertain the value of the terminals in each of the three cities he took from the county records the considerations recited in the records of deeds of a large number of lots and lands in each of the cities, compared them with the assessed values of those lots and lands, and found the per cent. that on the average the assessed values were of the considerations recited in these records. In St. Paul this was about 60 per cent. He then laid out strips of lands of varying widths along each side of the railway lands he desired to value, divided these strips into such sections as he thought were of about uni-

form value, found the values of the land in these sections from their assessed values on the theory that the assessed values were, in St. Paul, 60 per cent. of their real values. From these values of the sections of his strips he deduced the values of the railway lands between the strips by a comparison of areas. To the values of the railway lands thus ascertained he added 75 per cent. because in his opinion it costs railroad companies 75 per cent. more than the normal market value of lots and lands in these three cities to obtain such irregular tracts as they need and now own. To ascertain the value of the lands outside of terminals, he searched out himself and by means of employés the prices at which many lots and lands throughout the region traversed by the railroads had been sold, and from these prices he estimated the value of the lands of the railway companies, and then multiplied these values by three, because, as he testified, it costs railway companies three times the normal value of lands to procure the irregular tracts necessary for their rights of way and station grounds through agricultural lands and the smaller towns, cities, and villages. By these means Mr. Morgan found and testified that the cost of reproduction, and hence the present value of the land for right of way, yards, and terminals, of the Northern Pacific Company, was $15,385,078.47. At the request of counsel for the defendants he made another estimate in which he omitted to use the multiples 75 per cent. of the normal terminal values and three times the normal values of lands outside the terminals,
647 and disclosed therein the fact that if these multiples were not used his estimate would become $9,498,099.27, the value for which counsel for the defendants argue. But neither Mr. Morgan nor any other witness came to say that the latter was the true cost of reproduction or the real value of this item of the schedule. The defendants also introduced evidence of purchases and sales that tend to sustain Mr. Morgan's estimate of the value of this item.

On the other hand, the evidence for the complainants was, as to the terminals in the three cities, the testimony of three residents of each of those cities engaged in the real estate business, of long experience and accurate knowledge of the values of real estate in their respective cities, as to the values of the terminals of each of these companies, the testimony in the Northern Pacific Case of Mr. Cooper, the land commissioner of that company, who was in charge of its rights of way and had purchased for it since 1903 property for which there had been paid $6,139,542.35, and who had a general knowledge of the property in question and its value, the testimony in the cases of the other companies of officers thereof similarly qualified, and evidence of purchases and sales which tend to sustain the evidence of these witnesses. As to the lands outside of the terminals, the Northern Pacific Company produced the testimony of Mr. Cooper and proof of purchases and sales for railway purposes which tend to prove that his testimony of the cost of reproduction and the value of the property was not substantially above prices that had actually been paid for like property. He testified that he had much knowledge from his experience and observation of the cost and value of these lands outside the terminals, that he verified his knowledge by

investigating the purchases and sales of property in the vicinities of these various rights of way, that the necessary cost of obtaining such rights of way by a railroad company was three times as much as the normal value of the land, and that his testimony of the value of these tracts was based upon that fact. The evidence in the other two cases was of the same character. In each of the three cases the master added to the values of the terminals in St. Paul and Minneapolis, established by the testimony of the real estate dealers and Mr. Cooper, 5 per cent. for the cost of acquisition and consequential damages and to the values of the lands for terminals in Duluth, verified by the witnesses for the companies, 25 per cent. for railroad value and the cost of acquisition and consequential damages, and from the values of lands outside terminals, established by the evidence for the companies, he deducted 25 per cent. The result was that his ultimate finding of the value of the first item on the schedule was about $4,000,000 below the value which the testimony of all the witnesses, except Mr. Morgan, sustained, about $6,000,000 above that which Mr. Morgan's testimony supports, and about $11,000,000 above the amount which counsel for the defendant now urge the court to adopt. This finding of the master is assailed because he allowed 5 per cent. of the value of the terminals for cost of acquisition and consequential damages, because he increased the values of the terminals at Duluth, established by the testimony of the real estate dealers, 20 per cent. for the reason that they
648 failed to give due weight to the value of these terminals for railway purposes, because the companies' estimates of the value of this item included an addition to the values of the St. Paul and Minneapolis terminals fixed by the real estate dealers of 25 per cent. thereof for railroad value, and because he failed to follow the theory of Mr. Morgan and to adopt the value which Mr. Morgan would have found if he had discarded his multiples.

But the evidence in this case is conclusive, nay, we may say it is without conflict, that every railroad company is compelled to pay more than the normal market value of property in sales between private parties for the irregular tracts it needs and acquires for rights of way, yards, and station grounds. The defendants' witness, Mr. Morgan, testified that in his opinion the companies necessarily paid three times the normal value for the lands outside of the terminals in the three cities and 75 per cent. more than the normal value for their terminals within those cities. The master in effect found that the cost of reproduction and the present value of the lands for the terminals in the three great cities, including therein all cost of acquisition, consequential damages, and value for railroad use which he allowed, was only about 30 per cent. more than the normal value of the lands in sales between private parties. He found the value of the lands outside the terminals to be only twice their normal value. Findings of lower values would have been contrary to the great weight of the evidence and without substantial support therein.

The measure of the value of real estate is its market value for its most available use. There was uncontradicted evidence that the most available use of the terminal lands in Duluth, the use for which they

were of the greatest value, was their use for railroad purposes, that they were indispensable for those purposes, that the real estate dealers who testified to their values had fixed them originally in 1906, without regard to their value for railroad uses, and that since that time they had advanced in value from 15 to 25 per cent. Thus the proof is ample to sustain the addition to this 1906 estimate of the value of these lands of 25 per cent. thereof for railroad value, cost of acquisition, and consequential damages which the master allowed.

But counsel argue that this court should disregard Mr. Morgan's multiples and fix the value of this entire item at the amount that his estimate would produce if his multiples were not used, $9,498,099.27, because the original presumption was that the fares and rates fixed by the Legislature and the commission were just and reasonable, clear proof was requisite to overcome that presumption, if there is any substantial evidence to the contrary the proof is not clear, and the master's findings must be presumed to be wrong, and Mr. Morgan's evidence is sufficient to enable one fairly, in the exercise of an honest judgment, to disregard the findings of the master and the evidence which supports it, and to adopt the lowest value claimed. This contention is urged with such force and frequent repetition in brief and argument, and is applied so persistently to the various specific findings of the master, that it deserves consideration.

Rate making, the determination of what shall be the railroad rates in the future, is a legislative function. But rate judging, the determination whether rates already made yield a fair return upon
649 the reasonable value of the property used to earn them, or take that property without just compensation in violation of the Constitution, is a judicial function. Prentis v. Atlantic Coast Line, 211 U. S. 210, 226, 228, 29 Sup. Ct. 67, 53 L. Ed. 150; Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission (C. C.) 164 Fed. 645, 648. Why should the presumption that the judicial officer, on whom the duty to perform the latter function is imposed by the law, rightly discharges that duty and reaches just conclusions, be less persuasive than the presumption that legislative officers faithfully discharge theirs? When a rate is made under legislative authority, the legal presumption is that it is fair and reasonable, and proof to the contrary must be clear, especially in cases in which the rates challenged have never been in operation and injunctions are sought while their effect is yet speculative.

But the question whether fares and rates which have been put in operation confiscate the property of the companies in violation of the Constitution of the United States is a judicial, and not a legislative, question. And when that issue is presented the rules of law, of equity, and of practice applicable to the determination of judicial questions have effect. When, therefore, rates have been tried by actual use for many months, and their effect has become known and is proved, when the issue whether or not they take the property of the railroad company without just compensation has been made in a competent court, and all parties have introduced, in the presence, and subject to the cross-examination and rebuttal, of each other, all the evidence they desire, when that issue and the numerous subordi-

nate issues it involves have been heard and decided, as they have been in the case in hand, by a master, who has personally heard the testimony of every witness, received and examined all the evidence, and made specific findings of every material issue of fact in the case, the judicial presumption arises that his findings are right. This is a presumption of reason as well as of law, a presumption that forces itself upon and compels the reflective mind. Take the general issue. The Legislature and the Commission decided it upon the information they had acquired as to the probable effect of the rates they were making before those rates were tried. The master decided it after the fares and all the rates, except the commodity rates, had been tried for many months and their actual effect was known and proved. The former decision was based on the conjectural effect of the rates; the latter, on their actual effect. The master decided this issue upon a full trial, in which all parties produced all their evidence, subject to the cross-examination and rebuttal of each of the other parties, in the manner which the wisdom and experience of centuries has taught is most conductive to the discovery of the truth and the administration of justice. The Legislature and the Commission decided it without such trial or such proof.

Doubtless, if the fares and rates had been tested by the actual operation of the railroads under them, and the plenary proof of their effect and of the other facts presented to the master had been introduced before the Legislature and the Commission, they would have reached the same conclusions which the evidence forced upon the master's mind. They decided the issue upon evidence more conjectural or speculative; he, upon proof more certain and conclusive. And the presumption that a master learned in the law, accustomed by long experience at the bar and on the bench to hear and analyze evidence and draw just conclusions therefrom, has faithfully discharged his judicial duty and reached right results, is not less strong than the presumption that the Legislature and the Commission rightly discharged their official duties. The result is that when, after fares and rates have been in effect for months, plenary proof of that effect and of other facts pertinent to the issue of confiscation vel non is made before a master who finds the facts, the legal or judicial presumption that his findings are just and right, while not conclusive, is superior to the original presumption that they were just and reasonable, which arose before they were or could be tried, and it prevails over it. The question, therefore, upon the exceptions to the master's report, is not, is there any evidence upon which one might fairly, in the exercise of an honest judgment, reverse his findings? But it is, are the findings which are presumptively right sustained by clear proof? If they are, they should be affirmed, and the exceptions to them should be overruled.

Returning now to the finding of the value of the first item of the schedule, it is sustained by the testimony of nine real estate dealers familiar with the values of the properties in their respective cities, by the testimony of the officers of the companies who were well acquainted with the properties and their values, who had purchased

rights of way that cost many millions of dollars, and by the corroborative evidence of purchases and sales at prices approximating the values found. It is met by the theoretic value of Mr. Morgan, based on his assessment sales method of proof, and by evidence of purchases and sales corroborating it. But the foundation of this value is what copying clerks wrote that grantors in deeds wrote were the considerations of their conveyances of certain properties, and all of these parties were strangers to the parties to this suit. It is conditioned by Mr. Morgan's opinion of the number of such considerations it was necessary to use to discover the true relation of considerations of deeds or presumptive values of properties described therein to their assessment values, by his opinion as to the width of the strips on each side of the rights of way and as to the number and the lengths of the sections of the strips requisite to ascertain just measures of the values of the rights of way between them. He concedes, and counsel for the defendants do not deny, that his method would not reliably indicate the value of any specific lot or tract of land of moderate dimensions, and it is difficult to understand how it can escape the maxim, "falsus in uno, falsus in omnibus." A careful consideration and analysis of Mr. Morgan's testimony and of the other evidence introduced to support it has convinced that they are too indirect, uncertain, and inconsequential to overcome the direct and convincing proof of the values of these properties which the complainants have made, and the exceptions to the master's findings of these values must be overruled.

Exceptions were taken to the allowance of interest at 4 per cent. per annum on the cost of the reproduction of the railroad properties during one-half of the estimated times of their construction. But the evidence is conclusive that moneys invested for the pur-
651 chase of rights of way for, and in the construction of, railroads, ordinarily produce no net income during the period of construction, that the amount of capital thus losing returns is ordinarily equal to one-half of the cost of reproduction during the entire period of construction, or to the entire cost during one-half of that period. There is no doubt that interest at a fair rate on the capital invested in materials and labor that remain idle during construction is as much a part of the cost of constructing or reproducing a railroad as is the money paid for those materials or that labor. Brunswick Water District v. Maine Water Company, 99 Me. 371, 59 Atl. 537, 542. Mr. Morgan, the engineer and witness for the defendants, allowed in his report to the Commission, and verifies the justice of an allowance, of 4 per cent. per annum during one-half of the period of construction; but the amounts he allowed were less than those found by the master, because his estimates of the cost of reproduction and of the times requisite for construction were less. The weight of the testimony on this subject, however, sustains larger amounts than those fixed by Mr. Morgan or the master, and there was no error against the defendants in the latter's finding and allowance of the item here under consideration in either of the cases in hand.

The Minnesota Transfer Railway Company is a corporation and

the joint agent of the owners of ten different lines of railway for the interchange of their freight traffic in St. Paul and Minneapolis. Each of the ten owners owns one-tenth of the property of the Transfer Company by virtue of an ownership of stock. The St. Paul Union Depot Company is a like corporation and joint agent of the owners of nine lines of railroad for the exchange of their passenger traffic, and it is owned by nine constituents in the same way. Each of the three defendant companies owns one share in each of these terminal companies, and the latter corporations and their properties are operated and used as tools of the railroad companies that own them, to conduct transportation for their exclusive use and benefit. The defendants complain because the master allowed to each of these three companies $1,186,191 as the cost of reproduction and the value of their respective interests in the property of these subsidiary companies, and because he allowed to the Northern Pacific Company $1,180,151 for the cost of reproducing and the value of its interest in a similar corporation and its property used by the Northern Pacific Company for a like purpose at Duluth. It is not claimed that these interests are not worth, or that their cost of reproduction would not be, the amounts allowed; but it is contended that these values are not allowable at all, because they are represented by the stocks and bonds of the subsidiary companies. But these interests in these terminal corporations and their property are the most indispensable parts of the Minnesota properties of the defendant companies used to earn the fares and rates here in question, and any estimate of the value or of the cost of reproduction thereof which omitted the value or the cost of reproduction of these interests would have been incomplete and deceptive. The master rightly considered and allowed their value.

There are exceptions because the master allowed to the Northern Pacific Company $1,613,612.76, to the Great Northern Company $3,219,642, and to the Minneapolis & St. Louis Railroad Company $608,896.43, for the solidification and adaptation of their respective railroads, and deducted nothing from the cost of reproduction for depreciation. But these amounts are those allowed by the defendants' engineer and witness Morgan in his original estimates of the cost of reproduction which he reported to the Commission, and there is much other evidence in the record to sustain them. It is clear that a new railroad may appreciate or depreciate as it grows older. It may be renewed, repaired, and improved day by day and year by year as it is operated, until its embankments become more solid, its culverts and bridges firmer and more reliable, its ties and rails more steadfast and secure, and its rolling stock more seasoned and better adapted to its service and to the railroad it traverses, and until the whole property becomes more valuable than it was when it was first constructed. On the other hand, its embankments and its roadbed may be neglected and permitted to deteriorate by the action of rain, snow, and frost, its ties may be allowed to become partially decayed, its bolts and rails loose, and its rolling stock worn, without adequate repairs, until the entire property suffers great depreciation. Whether at a given

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time a railroad property is more or less valuable than it would be if it had just been constructed is a question of fact, that in a suit of this nature must be answered by the evidence. That evidence in this case is that the railroads, rolling stock, and appurtenances which constitute the great transportation machines of these companies in Minnesota are in better condition for use, more efficient, more steadfast, better adapted to each other, than if their construction was just completed, that all depreciation has been offset by appreciation, and that values to the amounts here allowed by the master have been added to the values of these properties new, by their age, their repairs, their renewals, their adaptation, and the assured efficiency that comes from constant careful maintenance and operation. There was no error in these allowances.

Many other exceptions were taken to items which constitute parts of the values found by the master. Each one of them has been examined in the light of the evidence, the arguments, and the briefs. They challenge matters less important than those that have been reviewed, and no good purpose would be served by stating and discussing them in detail. Suffice it to say that none of these exceptions is sustained by the record, and the result is that the findings of the values of the Minnesota properties of the three companies by the master must be confirmed.

The master divided the values of the Minnesota properties between freight business and passenger business and between interstate business and intrastate business on the basis of the respective gross earnings of these classes of business. Counsel for the defendants challenge this basis of division, and contend that the apportionment should have been made on the basis of the use made of the property by each of these classes of business, measured either (1) by the aggregate number of the ton miles and passenger miles of the respective classes, or (2) by the aggregate number of the car miles and engine miles of these classes. They say that if that
653 proportion of the value of the property of a company which the number of ton miles hauled by it in Minnesota bears to the aggregate of its ton miles and passenger miles in Minnesota be assigned to its freight business, and that proportion which its number of passenger miles bears to the same aggregate be assigned to the passenger business, and if that proportion of the value thus assigned to the freight business which the aggregate of the car miles and engine miles appertaining to the intrastate freight business bears to the car miles and engine miles used in the freight business be assigned to the intrastate freight business, and the same method be pursued in apportioning value to the intrastate passenger business the apportionment will be more equitable and just. The issue is between apportionment by use without regard to the worth or value of the use and apportionment according to the value of the use. The latter basis seems to be more logical and rational. Capitalization is founded on the worth of use, not on mere use. The value of property and of investment in every form is measured by the value of its use, not by its use divorced from the value thereof. The Minnesota Railroad Commission, the railroad companies, all

rate makers, base their rates primarily on the worth of the use of the railroad machines by the various classes of freight and by the passengers, and not on the amount of that use. The rate for hauling a ton of merchandise of the first class a mile is not five times the rate for hauling a ton of merchandise of class E a mile, because the former ton mile uses the railroad property five times as much as the latter, but because the use by the former is worth more than the use by the latter. Moreover, there is no unit of measurement of ton miles and passenger miles, of freight car miles and freight engine miles, or of passenger car miles and passenger engine miles, divorced from the values of the uses they make of the railroad property, from the classes of loads they carry and the distances these loads are hauled. Indeed, there is no proportioning or measuring relation between such varying uses of property, when no regard is given to the values of these uses.

On the other hand, the values of the uses, the earnings of the property, unavoidably condition the value of the property used, and present a natural and equitable basis of apportioning that value to these uses. Cases may indeed be imagined in which this basis does not produce persuasive results. One of them was suggested by Mr. Justice Brewer in Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins, 176 U. S. 167, 176, 20 Sup. Ct. 336, 44 L. Ed. 417, and others of like character have been presented in argument by counsel. But no basis has been suggested and none has been discovered which seems to be more equitable or more accurate. It may be that there is no basis or method that brings perfect or ideal results. But because the ton mile and passenger mile basis has no common unit of measurement, because that basis and the car mile and engine mile and the passenger car mile and passenger engine mile bases exclude the effect of the values of the uses made of the railroad property by the various classes of freight and by the passengers carried, because there is really no proportioning relation between uses divorced from their values and the value of the property used, because these bases ignore the differences in the classes of freight carried and in
654 the distances they are hauled, because the apportionment of the value of railroad property on the basis of the gross earnings of the classes of business, which disclose approximately the values of their uses of it, gives effect to these material differences, appeals more persuasively to the reason and produces results more equitable than any other basis suggested and because this basis has commended itself to the judgment of, and has been adopted by, the courts upon whom duties of apportionment of this nature have been imposed in like cases, the master was justified in following their decisions and his action and report in this regard is confirmed. Ames v. Union Pacific R. R. Co. (C. C.) 64 Fed. 165, 179; Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins (C. C.) 90 Fed. 363, 370; St. Louis & S. F. Ry. Co. v. Hadley (C. C.) 168 Fed. 317, 348-352; Northern Pacific Ry. Co. v. Keyes (C. C.) 91 Fed. 47, 56, 57; In re Arkansas Railroad Rates (C. C.) 163 Fed. 141, 142; Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 497.

In the cases of the Northern Pacific Company and the Great Northern Company exceptions are urged to the master's division of common cost between freight business and passenger business, to his finding that the cost of doing intrastate freight business was 2½ times the cost of doing interstate freight business, and to his finding that the cost of doing intrastate passenger business was 15 per cent. more than the cost of doing interstate passenger business. About 60 per cent. of the cost of doing the passenger and freight business in Minnesota consisted of items which in themselves disclosed the fact that they were incurred either in doing the passenger or in doing the freight business. All parties conceded that these items were properly assigned to the freight business and the passenger business, respectively, by the railroad companies, and these are termed "allocated items." The remaining 40 per cent. of the cost consisted of items incurred for the common benefit of the passenger business and the freight business, and there was no method of assigning these items that was certain to be mathematically and absolutely correct. Two methods were advocated by the respective parties to this controversy. The defendants introduced in evidence an allocation of these items made by Mr. Conway W. Hillman, an expert railway accountant, without extended experience as a railroad operator, whereby, in the Northern Pacific case, about $400,000 more common cost, and in the Great Northern case, about $900,000 more common cost, was assigned to the passenger business, and a correspondingly less amount to the freight business, than was assigned by the companies and confirmed by the master. This division was supported by the testimony of Mr. Hillman that in his opinion it was right and reasonable and by his statement of his reasons for this belief. But no other witness came to support his view. On the other hand, a large number of witnesses, who had long been familiar with the details of the expense of operating railroads, who had enjoyed a long experience in their actual operation, and who had considered in the light of their knowledge and experience and formed opinions concerning a just division of this common cost, testified that the allocation made by the companies and finally adopted by the master was fair and just. This testimony was buttressed by evidence that this basis of division
655 had been used by these and other railroad companies for their own information and convenience for some time before the questions here at issue had arisen, and that it had at one time received the approval of the Interstate Commerce Commission. So it is that whether the knowledge, experience, and opportunities of the witnesses to form correct judgments upon this issue or their numbers be considered, the great preponderance of the evidence sustains the division made by the master, and it must stand.

All admit that the cost of doing intrastate business exceeds the cost of doing interstate business, and the issue is, how much does the cost of doing the former exceed the cost of doing the latter? Upon that issue many hundreds of printed pages, a mass of evidence too vast for recital or review, has been examined and con-

sidered by the master and the court. The evidence for the state consists of the testimony of Mr. Hillman, and the evidence for the complainants is the testimony of six men who have long been engaged in and are familiar with the actual operation of railroads and the expenses thereof. Many criticisms of the testimony of each of these witnesses, of their opinions, and of the reasons they give for them, have been made by counsel for the respective parties, and have been the subjects of study and reflection in the light of the evidence and the arguments. Mr. Hillman's conclusion in the Northern Pacific case, and it was similar in the other cases, was that the cost per ton per mile of doing intrastate business was about 44 per cent. more than the cost of doing interstate business. Starting with the cost of doing business which was entirely local upon certain branch lines of the company, a cost which he extracted from its records, and with the assumption that the cost per ton per mile of doing the local business on the main lines of the company was the same as it was on the branch lines, he derived this result from these premises, from other records and reports of the company, and from a long and intricate series of computations, assumptions, and deductions. No chain, however, is stronger than its weakest link, and an examination of the method he pursued and the bases upon which he founded his conclusion has convinced that the result he deduced is conditioned by so many of his own opinions and assumptions, unsupported by other persuasive proof, that his conclusion is entitled to no more weight than his opinion that it and the means by which he reached it are correct.

Many witnesses, however, whose evidence disclosed the facts that they had long been engaged in the actual operation of railroads, that they had learned and knew from actual observation and experience the conditions which increased and diminished the cost of the transportation of freight, and the relative effect to these conditions upon the cost of interstate and intrastate transportation, that they were familiar with the details of the relative expenses of doing intrastate and interstate freight business, witnesses whose opinions are certainly as likely to be sound as that of Mr. Hillman, came and testified that, while they had no means of accurately and mathematically determining the fact, they were confident in the opinion that the cost per ton per mile of doing intrastate freight business was from three to six times the cost per ton per mile of doing interstate business. Counsel for the defendants say that a portion
656 of local business is interstate business and takes a short haul, and a portion of through business is intrastate business and takes a long haul, and that the effect of the testimony of these witnesses is not that the cost per ton per mile of intrastate freight business is from three to six times the cost of inter-tate freight business, but merely that the cost of local and short-haul business bears that relation to the cost of through and long-haul business. The testimony of these witnesses has been considered in view of this criticism, but the record does not seem to sustain the contention of counsel. For example, Mr. Elliott says that the average haul of intrastate freight in Minnesota on the Northern Pacific

Railroad was about 104 miles, that the average haul of interstate freight touching Minnesota on that railroad was about 485 miles, that the expense of short hauls is much greater than that of long hauls, and after enumerating various other reasons he testified that these reasons "all lead me to the conclusion that the so-called short-haul intrastate business costs anywhere from three to six or seven times as much as the so-called long-haul, through interstate business." On his redirect examination he was asked if by the statement which has just been quoted he meant "to compare the average cost of the state business with the average cost of the interstate business," and his answer was, "That was my intention in making that statement in my direct examination last week." Mr. Doddridge testified in the Great Northern case that his judgment was that upon the basis of ten miles, excluding the Missabe ore traffic, the ratio of extra cost per ton per mile of intrastate Minnesota freight was at least three times, and maybe four times, as great as that of interstate freight. True, much was said in the testimony of these and other witnesses of the extra cost of short hauls over long hauls, and of local business over through business, for the witnesses had in mind that a larger proportion of the interstate freight than of the intrastate freight was through business and took the long hauls; hence the terms "local freight" and "local business" appear to have been frequently used in this case and in other cases of this character to mean intrastate freight and intrastate business. But, when all the testimony of each of the six witnesses for the complainants upon this issue is considered together, it is persuasive that their testimony clearly discloses their opinions that the cost per ton per mile of the intrastate freight business of the two companies in Minnesota was from three to six times the cost of their interstate freight business in that state. The testimony of Mr. Hillman on behalf of the defendants falls far short of prevailing over this evidence, and the exceptions to the finding of the master that the cost of the Minnesota intrastate freight business of the companies per ton per mile was at least 2½ times that of the interstate freight business must be overruled. For similar reasons the master's finding that the cost of intrastate passenger business per passenger mile was 15 per cent. more than that of interstate passenger business is confirmed. Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 499; In re Arkansas R. R. Rates (C. C.) 163 Fed. 141, 143; Chicago, Mil. & St. P. Ry. Co. v. Tompkins, 176 U. S. 167, 20 Sup. Ct. 336, 44 L. Ed. 417; Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S. 257, 262, 22 Sup. Ct. 900, 46 L. Ed. 1151; Ames v.
657 Union Pacific R. R. Co. (C. C.) 64 Fed. 165, 184; Northern Pac. R. R. Co. v. Keyes (C. C.) 91 Fed. 47, 54; St. Louis & S. F. R. R. Co. v. Hadley (C. C.) 168 Fed. 317, 348. The master did not rest his final conclusions on this relatively greater cost of intrastate business per ton per mile without a careful consideration and credit to the intrastate business of the relatively greater revenue per ton per mile derived from that business, thus reducing the percentage for the freight business in the Northern Pacific case,

for instance, from 250 per cent to 173+ per cent., and for passenger business from 115 per cent. to 113+ per cent.

Complaint is made that the master finds that the companies are entitled to a net return of 7 per cent. per annum upon the respective values of their properties devoted to this public use. The character of the business in which an investment is made, the locality in which it is placed, the returns secured in that locality from other investments of a similar nature, the uniformity and certainty of the return, and the risks to which the principal and the income from it are subjected condition the measure of a fair return upon capital invested. An investment in a bank, in a factory, in a mercantile, manufacturing, or agricultural business, is substantially free from regulation by the government and exempt from any duty to the public, except that of paying taxes. If the business in which such an investment is made is unprofitable, its owners may promptly discontinue its operation until more prosperous days come and then return to their undertaking. An investment in a railroad which operates in many states is subject to the regulation of its business by many governments. Its owners owe the duty to the governments and to the public to operate their railroad continually in days when its operation is unprofitable as well as when it is remunerative, a duty they must discharge under the penalty of the forfeiture of their property if they fail. In view of these facts, they ought to be permitted to receive a return large enough to enable them to accumulate in prosperous days a surplus sufficient to enable them to protect their property in days of disaster and to make their average return through days of prosperity and of adversity fair and just. The lands in Minnesota through which these railroads extend are fertile and productive. The cities, villages, and towns they reach are rapidly increasing in population and wealth, and the people they serve are thriving and successful. The evidence satisfies that the railroads are maintained in excellent condition, that they are efficiently and on the whole economically managed and operated, and are rendering commendable service. Justice to the thriving people they serve does not require that the owners of these railroad properties should be deprived of a fair return upon their values. To deprive them of such a return would prevent advances and tend to compel reductions in the wages and salaries of their employés, would tend to prevent the extension of their lines into portions of the state where the development and accommodation that railroad service assures would be welcome and may be needed, to deteriorate the character of the service they render, and to retard the general prosperity. The legal rate of interest on a debt in Minnesota, in the absence of contract, is 6 per cent., and by contract it may be 10 per cent.
658 per annum. Rev. Laws Minn. 1905, § 2733. Rational investments in agricultural, manufacturing, mercantile, and other industrial pursuits, and even well-secured loans, yield returns in Minnesota corresponding with these lawful rates. Investments in railroads and the returns thereon are at the risk of failures and partial failures of crops, of the disasters, delays, and expenses of

unusual storms, snow, and cold, of the great financial disasters which occasionally prevent or delay the movement of traffic, and of the burden of continuous operation whether profitable or unremunerative. It is an axiom in economics that the greater the risk the greater must the return be upon invested capital, and the conclusion is irresistible that a net return of 7 per cent. per annum upon the respective values of the properties of these companies in Minnesota devoted to transportation is not more than the fair return to which they are entitled under the Constitution of the United States.

Other exceptions were taken by the defendants, but they must be overruled, because they are not of the controlling character of those that have been discussed, and they are not sustained by the record. For the same reasons, the exceptions of the complainants must share a like fate.

The findings of the master must be confirmed. The fares and rates prescribed by the acts of the Legislature and the orders of the Railroad and Warehouse Commission which have been considered, have been, are, and will be, as to each of these railroad companies, unreasonably low, unjust, and confiscatory. Each of those acts and orders is violative of the fourteenth amendment to the Constitution, and void, and a decree for the complainant must be rendered in each of the cases.

It is so ordered.

(Endorsed:) Decision Confirming Master's Report, etc. Filed April 8th 1911. Louise B. Trott, Clerk.

659 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes December Term, A. D. 1910.

APRIL 10TH, 1911.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Judge.
Louise B. Trott, Clerk.

Equity. 857.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud.

Decree.

This cause came on for final hearing on the evidence, the report and findings of the Master and the exceptions thereto, Walter H.

Sanborn, Senior Circuit Judge, presiding, and was argued on behalf of the complainants by Mr. Jared How, Mr. Charles W. Bunn, Mr. Hale Holden and Mr. Pierce Butler (Mr. Robert Thorne and Mr. William D. Mitchell, were with them on the briefs), on behalf of the defendant George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist by Mr. Edward T. Young and Mr. Edmund S. Durment (Mr. George T. Simpson was with them on the briefs) and now after consideration, it is ordered, adjudged and decreed:

SECTION 1. That the findings and report of the Master be, and the same are, confirmed and the exceptions thereto are overruled.

SECTION 2. That the acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September
660 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the bill of complaint, operate as a burden upon and an interference with, a regulation of and an unjust discrimination against commerce among the states conducted and carried on, over and upon the lines of railway of the defendant the Northern Pacific Railroad Company, and said acts and orders are and each of them is, confiscatory and constitutes an attempt to deprive the complainant and the said Railway Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said railway company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said acts and orders are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is, void and of no effect so far as the said Northern Pacific Railway Company, its officers, directors, agents and employés are concerned, and that said Northern Pacific Railway Company, its officers, directors, agents and employés be, and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said act.

SECTION 3. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish,
post or put in force the rates, tariffs and charges prescribed by
661 the said orders of September 6, 1906, and May 3, 1907, and that they are, and each of them is, further permanently restrained and enjoined from taking any action, step or proceeding

against said Railway Company, or any of its officers, directors, agents or employées to enforce any fines, penalties or punishments for the violation by them of said orders of September 6, 1906, and May 3, 1907.

SECTION 4. That said George T. Simpson, the Attorney General aforesaid be, and he is, hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 5. That said defendants E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph Michaud, and all other shippers of freight over the lines of said Railway Company, and all others making use of said lines of Railway, be and they are, and each of them is, hereby permanently enjoined and restrained from instituting, or causing to be instituted any action or proceeding for any violation of the said acts or orders, or any of them.

SECTION 5. That the complainant recover of the defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, — Dollars, the costs of this suit which shall be hereafter taxed and inserted herein and that the complainant have execution thereof.

SECTION 7. This decree shall take effect and be in force on and after the first day of June, A. D. 1911.

WALTER H. SANBORN,
United States Circuit Judge.

662 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, December Term, A. D. 1910.

APRIL 10TH, 1911.

Let the foregoing decree be filed, rendered and recorded this April 8th, 1911.

WALTER H. SANBORN,
United States Circuit Judge.

663 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, December Term, A. D. 1910.

MAY 2ND, 1911.

Tuesday morning Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Louise B. Trott, Clerk.

No. 857. Equity.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Now comes the defendant, Northern Pacific Railway Company and represents to the court that the preparation of new tariffs to comply with the injunction cannot be completed by the first day of June, the date fixed by the decree, but will necessarily require until on or about the first day of July, A. D. 1911.

Wherefore, defendant moves that the decree be modified by making it effective on the first day of July instead of the first day of June, A. D. 1911.

CHARLES W. BUNN,
For Northern Pacific Ry. Co.

St. Paul, Minn., May 2, 1911.

The within motion came on for hearing before the Court on the second day of May, 1911, before the order was entered granting the appeal. The Court after hearing counsel for the defendant Railway Company and Edward T. Young and Thomas D. O'Brien, counsel for the other defendants,

Ordered, That the motion be, and the same is hereby granted.

May 2, 1911.

WALTER H. SANBORN,
U. S. Circuit Judge.

664 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, May–December, A. D. 1910, May 2nd, 1911.

Equity. No. 857.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors Respectively of the Will of John S. Kennedy, Deceased, and Henry F. Dimock,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young).

Consolidated.

This day come the parties to these causes by their respective solicitors, Messrs. How, Butler & Mitchell and Hale Holden, appearing on behalf of all the complainants, Mr. Charles W. Bunn appearing on behalf of the defendant Northern Pacific Railway Company,

Messrs. E. C. Linley, R. A. Jackson appearing on behalf of the Great Northern Railway Company and George W. Seevers, appear-
665 ing on behalf of the defendant Minneapolis & St. Louis Railway Company, Messrs. Edward T. Young and Thomas D. O'Brien appearing on behalf of all the other defendants.

Whereupon Mr. Edward T. Young makes application to the Court to be allowed to file an appeal in each of the above entitled causes and presents a bond for costs in the sum of Five Hundred Dollars ($500.00), in each cause, and moves the Court to have the injunctive portion of the decrees suspended until the further order of this Court, or until the coming down of a Mandate from the Supreme Court of the United States.

Mr. Pierce Butler argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the complainants.

Mr. Charles W. Bunn argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the Northern Pacific Railway Company.

Mr. Edward T. Young replies and argues further for the allowance of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the other defendants.

Mr. Hale Holden argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the Decrees on behalf of the complainants.

Mr. Thomas D. O'Brien argues in reply and conclusion for the allowance of the appeal and suspension of the injunctive portion of the decrees on behalf of the other defendants.

Whereupon, after hearing the arguments and statements of the solicitors for the respective parties hereto and being fully advised in the premises, upon due consideration thereof, it is by the Court ordered that said appeals be allowed and the bonds in the sum of Five Hundred Dollars each, in each case be and they hereby are approved, and that the motion to suspend the injunctive portion of the Decrees be and the same hereby is denied.

* * * * * * *

A true record.
Attest:

LOUISE B. TROTT, *Clerk.*

666 United States Circuit Court, District of Minnesota, Third Division.

DAVID SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Stipulation.

In accordance with the stipulation entered into and made of record in open Court during the argument of this cause, before Hon. Walter H. Sanborn, Circuit Judge, reading "that the annual reports made by the three railway companies involved in these cases to the State of Minnesota for the years 1907, 1908 and 1909, may be transcribed and filed and made a part of the record in the case", it is

Agreed, that the abridged copies of the reports of the Northern Pacific Railway Company to the State of Minnesota for said years herewith deposited with the Clerk, may be filed as full compliance with said stipulation, and in lieu of the entire reports of said Company for said years. Those portions of said reports omitted are agreed to be immaterial to any of the issues involved in this case.

Dated April 27, 1911.

E. T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Defendants, Simpson, Staples, Mills, Elmquist, et al.

JARED HOW,
PIERCE BUTLER,
Solicitors for Complainants.

(Endorsed:) Stipulation to file Abridged copies of Reports of 1907, 1908 and 1909. Filed May 2, 1911. Louise B. Trott, Clerk.

667 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, December Term, A. D. 1910, May 2nd, 1911.

Equity. No. 857.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud.

Order.

Upon reading the stipulation of the parties to this cause this day filed,

It is ordered, That the abridged copies of the reports of the Northern Pacific Railway Company to the State of Minnesota for the years 1907, 1908, and 1909, deposited with the Clerk of this Court, be filed and make a part of the record in this case in accordance with the stipulation of the parties entered into in open Court during the final argument of this cause, and in lieu of complete copies of said reports.

Dated May 2, 1911.

WALTER H. SANBORN,
United States Circuit Judge.

668 The Abridged copies of the Reports for the years 1907, 1908 and 1909 referred to in the foregoing stipulation and order are returned with this Return, but are certified separately.

669 In the United States Circuit Court for the District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

To the Above Named Complainant:

Please take notice that on the Second day of May, 1911, at two o'clock P. M. at the District Court Room in the Federal Building, in the City of St. Paul, Minnesota, the undersigned defendants will

apply to Honorable Walter H. Sanborn, Judge of said Court, for allowance of an appeal from the judgment and decree in the above entitled action entered on the 8th day of April, 1911, and at the same time and place the undersigned defendants will ask that an order be entered in said cause postponing the taking effect of the injunctional part of said decree so far as Chapter 97 of the General Laws of Minnesota for 1907 and the orders of the Railroad & Warehouse Commission prescribing class rates as particularly referred to in the complaint are concerned, until the further order of this Court or of the Supreme Court, of the United States.

Respectfully,

GEORGE T. SIMPSON,
IRA B. MILLS,
CHARLES F. STAPLES, AND
CHARLES E. ELMQUIST,
By EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Their Solicitors.

(Endorsed:) Notice of Petition to Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

670 In the United States Circuit Court for the District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, and Adolph Michaud, Defendants.

As solicitor for J. Rumsey Reeve, I hereby admit service on this 27th day of April, 1911, of the notice requesting said Reeve to join with the defendants Simpson, Mills, Staples, and Elmquist in an appeal to the Supreme Court of the United States in the above entitled action, from the decree entered therein on April 8th, 1911.

W. C. BICKNELL,
Solicitor for J. Rumsey Reeve.

671 In the United States Circuit Court for the District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

To Northern Pacific Railway Company, O. J. Whitman and J. Rumsey Reeve:

You, and each of you, being named as defendants in the above entitled cause and having appeared therein, are hereby notified that George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, who are also defendants therein propose to appeal to the Supreme Court of the United States from the judgment and decree of the above named Circuit Court entered therein on April 8, 1911, and that they will on the 2nd day of May, 1911, at two o'clock P. M. present to the Honorable Walter H. Sanborn, Circuit Judge, at the District Court Room in the Federal Building in the City of St. Paul, Ramsey County, Minnesota, their petition to have their said appeal allowed. That at the same time and place the Honorable, the said Walter H. Sanborn, will be requested by said petition-
672 ing defendants to fix the amount of the bond on the appeal to be required of them.

And the above named George T. Simpson, Ira B. Mills, Charles E. Staples and Charles E. Elmquist hereby request and demand that you join with them in the taking of said appeal to the Supreme Court.

Very respectfully,

GEORGE T. SIMPSON,
IRA B. MILLS,
CHARLES F. STAPLES AND
CHARLES E. ELMQUIST,
By EDWARD T. YOUNG,
THOMAS D O'BRIEN,
Their Solicitors.

(Endorsed:) Notice to Join in Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

673 In the United States Circuit Court for the District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Now come the above named defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist and allege that they are advised and verily believe that they are aggrieved by the decree made and entered in said cause on the 8th day of April, 1911, adjudging and decreeing that the legislative acts and orders of the Railroad & Warehouse Commission of the State of Minnesota involved in said cause are, and each of them is, void and of no effect and violative of the constitution of the United States, and adjudging and decreeing that these defendants be permanently enjoined and restrained from any attempt to compel the observance and operation of the rates and charges prescribed by said legislative acts and orders of said Commission, and thereupon have appealed from said decree to the Supreme Court of the United States of America.

That these defendants heretofore demanded of the other defendants named in this cause who have appeared therein that they join in this appeal and duly notified each of said other
674 defendants of the time and place where this petition would be presented, as more fully appears from said original notice and proof of service thereof, which is herewith presented and filed in this court.

Therefore, these defendants pray that said appeal be allowed and that a transcript of the records, proceedings and papers upon which said order was based and made be duly authenticated and transmitted to said Supreme Court of the United States, and with this, their petition for the allowance of said appeal, these defendants, said petitioners, do hereby file an assignment of errors which they will assert, rely upon and urge in support of their said appeal in said Supreme Court of the United States.

And your petitioners further pray that upon the allowance of this appeal said decree so appealed from and its operation be suspended until the further order of this Court or until the order of said Supreme Court of the United States.

Your petitioners herewith present a bond of appeal in the sum of Five Hundred ($500) Dollars duly executed upon their behalf which they pray be approved of, and your petitioners will ever pray.

EDWARD T. YOUNG.
THOMAS D. O'BRIEN.
Solicitors for Petitioners.

(Endorsed:) Petition for Allowance of Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

675 In the United States Circuit Court for the District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Order Allowing Appeal.

On this Second day of May, 1911, at two o'clock P. M. the above named defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist presented to the Court a joint petition asking for the allowance of an appeal to the Supreme Court of the United States from the judgment and decree entered in said action in this Court on the 8th day of April, 1911, and also asking that until the further order of this Court, or of the Supreme Court of the United States, the injunctional part of said decree be suspended as to the class and passenger rates involved in this litigation. It was made to appear that a notice of the time and place of the presentation of this application had been duly served upon the counsel for complainant, and upon counsel for all the other defendants who had appeared in said action. Edward T. Young and Thomas D. O'Brien
676 appeared as counsel for petitioning defendants; Messrs. How, Butler & Mitchell and Hale Holden appeared as counsel for said complainant. C. W. Bunn appeared as counsel for defendant Northern Pacific Railway Company, and no other of the parties appeared. After hearing counsel both upon the question of allowing said appeal and suspending the effect of said decree during the pendency of said appeal:

It is ordered That said appeal be and the same is hereby allowed as prayed in said petition and the bond upon said appeal conditioned for the payment of the costs thereof in the sum of Five Hundred ($500) Dollars is approved.

It is further ordered That the application of said appealing defendants for a suspension of the injunctional part of the decree heretofore entered herein be and the same is hereby denied.

Dated at St. Paul, Minnesota, this Second day of May, A. D. 1911.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order Allowing Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

677 United States Circuit Court, District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Assignments of Error.

Now comes the above named defendants George T. Simpson Ira B. Mills, Charles F. Staples and Charles E. Elmquist, and say there is manifest error in the record of the proceedings and in the decree in the above entitled cause in this, to-wit:

Said Court erred in finding and decreeing

"That the acts of the Legislature of the State of Minnesota, approved April 4, 1907, and April 18, 1907, respectively, and each of them and the orders of the Railroad & Warehouse Commission of the State of Minnesota of September 6, 1906, and May 3, 1907, respectively, and each of them recited in the bill of complaint, operate as a burden upon and in interference with a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the defendant Northern Pacific Railway Company."

The foregoing part of the decree rests upon certain erroneous findings of fact and conclusions of law made by the Master and upheld by the Court, in each and every one of which there is manifest error in the following particulars, to-wit:

a. The Court erred in ignoring the fact that commerce was divided into the two distinct classes of interstate and intra-
678 state, by the commerce clause of the Federal Constitution, whereby the power to regulate the former class was conferred upon Congress, the power to regulate the latter being left in the states.

b. The Court erred in assuming that the respective constitutional powers of the states and the Nation over commerce can be enlarged or contracted by the similarity and dissimilarity of the conditions affecting interstate and intrastate commerce in any group of adjacent states.

c. The Court erred in holding that interstate rates are presumed to be reasonable simply because the schedules — filed by the carrier with the interstate commerce commission, and that the power of the state to regulate its internal commerce can be exercised only to the extent of making intrastate rates harmonize with interstate rates in the same field whether the interstate rates are reasonable in fact or not.

d. The Court erred in holding that there is any legal relation

between interstate and intrastate rates except that arising out of the requirement that when rates are fixed on either class by the sovereignty having control thereof such rates must be reasonable in and of themselves without regard to the earnings of the carriers on the other class.

e. The Court erred in holding that conditions affecting interstate and intrastate business were similar and that the rates on the two constitutional classes were relatively fair and equal in
679 the territory comprising Wisconsin, Minnesota, North & South Dakota, before the rates here involved were prescribed, first because such finding is immaterial in determining the governmental power of this state, and secondly because such findings are not supported by, but are contrary to the evidence.

f. The Court erred in holding that the provisions of the interstate commerce act forbidding discrimination between localities in interstate commerce is violated when intrastate rates to a given point differ from interstate rates for practically equal distances to the same point, though the intrastate rates may be fair and reasonable in and of themselves and the interstate rates may be in fact unfair and unreasonable in and of themselves.

g. The Court erred in disregarding the proof of peculiar conditions in the way of home markets which distinguish the internal commerce of Minnesota from the intrastate commerce of adjacent states.

h. The Court erred in holding the principal upon which the schedules involved were constructed, were erroneous because such schedules were made on exactly the same principle as the distance and terminal tariffs which had been long maintained by the companies themselves, and for the further reason that the making of schedules is a legislative question, the courts being concerned only with the sufficiency of the revenue produced thereby.

680 II.

The Court erred in finding and decreeing "That said legislative acts and orders, are, and each of them is, confiscatory and constitute an attempt to deprive the complainant and the said Railway Company of their and its property without due process of law, and to deny them and it the equal protection of the law, and that each of said acts and orders is violative of the Constitution of the United States, and are, and each of them is, void and of no effect."

The foregoing part of the decree is based upon certain findings of fact and conclusions of law made by the Master, and upheld by the Court, in each of which the Court committed manifest error in the following particulars:

1. The Court erred in finding and decreeing that the value of railroad property employed in the public service is to be determined solely by estimating the cost of reproducing the same.

2. The Court erred in holding and basing its findings of value upon an estimate of the cost of reproduction which left out of consideration the conditions and circumstances under which the rights of the railroad company in the lands used by it were originally

acquired, the amount originally expended in acquiring such rights, and in constructing and equipping the road, and the amount since expended by the railroad company out of capital in permanent improvements, and the amount expended for such permanent improvements out of earnings.

3. The Court erred in basing its findings of value on an estimate which excluded entirely the character, and the face and market value of the stocks and bonds of the company.

4. The Court erred in basing its findings of fact as to value on an estimate which entirely ignored the character of the railroad as a public highway, and wholly failed to distinguish between the value of the fee title of the railroad company.

5. The Court erred in basing its findings of value on an estimate of the cost of reproduction founded entirely upon arbitrary assumptions governed by no fixed or uniform rules.

681 6. The Court erred in basing its findings of value solely upon an estimate of the cost of reproduction which nullifies all the laws against the fictitious capitalization of railroads, capitalizes permanent improvement made out of earnings, and also capitalizes the growth and industrial development of the country by assigning a value to the railroad easement in land, based on present market value of adjacent private property.

7. The Court erred in finding that the value of property devoted to the use of the public can be ascertained by a method based upon the imaginary obliteration and "reproduction" thereof, especially as to rights in land, and in failing to find and hold that the maximum bases upon which a railroad is entitled to a reasonable return over and above the cost of maintenance and operation, is the actual investment made in acquiring its rights in the necessary land, and in constructing and equipping the road, and in making the permanent improvements thereof which were paid for out of capital.

8. The Court erred in finding that the value of railroad easement in land acquired in the past can be correctly determined by taking the present market value of the fee in adjacent land and increasing it by an arbitrary element called "railroad value" and again increasing this by a fixed multiple of itself to cover the constructive severance damages. The Court also erred in holding that the value of railroad property can be determined upon the many arbitrary bases embodied in the method upheld by it, such as allowances for imaginary contingencies and legal expenses, and interest on the cost of the road during an arbitrary and imaginary period of reconstruction.

9. The Court erred in not dismissing the complaint because of the total failure of the complainant to furnish any evidence of the original cost of acquiring construction or improving any part of the property, and for the total failure of the complainant (as shown by the Master's ninth finding) to furnish any proof of the face or market value of the stocks and bonds which represent the part of the total investment devited to the public service, separate from the other profit producing property owned by the Company and acquired by the same capitalization.

10. The Court erred in apportioning the value of the property used in the state between passenger and freight business on the gross earnings bases, and apportioning the common cost on the train and engine mileage bases.

11. The Court erred in apportioning the value assigned to the freight and passenger business respectively between interstate and intrastate traffic on the gross earnings basis.

682 12. The Court erred in basing its findings as to the relative cost of handling interstate and intrastate business on the opinions of witnesses produced by respondent without any proof on behalf of respondent of the actual facts out of which the difference in relative costs arise, after it was shown by appellant that such relative costs can be accurately ascertained by proper cost accounting.

13. The Court erred in rejecting the evidence given on behalf of appellants as to the relative cost of doing the inter and intra business as shown by data taken from the books of the railroad company.

14. The Court erred in not including in the income of the railroad company all net income derived from other property acquired by the same capitalization and held and used by the company for profit.

15. The Court erred in including in the value of the railroad property cost of reproducing the property of other independent corporations in which the railroad company held stock.

16. The Court erred in finding that the cost of handling intrastate freight business is two and one-half times the cost of handling intrastate freight business and the cost of handling intrastate passenger business is fifteen per cent greater than the cost of handling interstate passenger business, for the reason that such findings are wholly unsupported by and are contrary to, the evidence.

17. The Court erred in failing to require respondent to furnish proof of the total quantity of freight carried on through trains and on local trains respectively over the operating divisions of the road wholly or partly within the state, and the haulage cost of the local trains and the through trains separately, and the respective quantities of interstate and intrastate traffic hauled on said local and through trains, for the purpose of furnishing a basis for determining by computation the relative cost of the inter and intra business, and the Court erred in failing to dismiss the action for failure of complainant to furnish such proof.

18. The Court erred in the matter of determining the difference in the cost of handling interstate and intrastate traffic, in failing to limit the extra cost to the transportation expenses, that being the only grand division of the "cost of operation" in which any difference can exist.

19. The Court erred in refusing to dismiss the case for failure of proof by the complainant as to the actual value of the property employed in the service in the state, and the actual value of the portion thereof employed in intrastate business, and for a total want of proof of the cost of handling such intrastate business or any data from which the same could be deduced.

683 20. The Court erred in holding that the income from the stock of an express company, owned by and operating over

the railroad, should not be added to other income for the purpose of determining the adequacy of such total income.

21. The Court erred in holding that the legal presumption of reasonableness in favor of the rates was overcome by the finding of the Master that they were unreasonable.

22. The Court erred in finding that a railroad is entitled to a return of seven per cent net on the value of the property devoted to the public use.

23. The Court erred in holding that, after the railroad company had accepted and put the merchandise rates and the passenger rates into effect they can be enjoined at the suit of this complainant as inadequate without any application by the Railroad Company to the Railroad and Warehouse Commission for increased rates, in violation of the law of the state requiring such application to be made before existing rates can be raised.

24. The Court erred in adjudging that costs should be taxed against these defendants, who were sued herein solely because of their respective official positions and not because of any personal interest, or any act committed or threatened by them as individuals.

25. The Court erred in finding and decreeing that the laws and orders involved are, or that either of them is, void on account of the penalties provided for the violation thereof.

Wherefore said appellants pray, for each of the errors above specified the said judgment and decree be reversed.

EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Appellants.

(Endorsed:) Assignments of Error and Prayer for Reversal. Filed May 4th, 1911. Louise B. Trott, Clerk.

684 United States Circuit Court, District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Bond of Appeal.

Know all men by these presents, That we George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, as principals, and the United States Fidelity & Guaranty Company of Baltimore, Maryland, as Surety, are held and firmly bound unto the above named complainant in the sum of Five Hundred ($500) Dollars, lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seal- and dated this Second day of May, A. D. 1911.

The condition of the above obligation is such, That Whereas the judgment and decree of said Court was entered in the above entitled action on the 8th day of April, 1911, adjudging that the Acts of the Legislature of the State of Minnesota, approved April 4,
685 1907, and April 18, 1907 respectively, and each of them, and the Orders of the Railroad & Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907 respectively, and each of them, is void and of no effect and enjoining the Northern Pacific Railway Company, its officers, directors, agents and employees, and each of them, from continuing to observe or keep in force the tariffs fixed by said Orders and Acts, and each of them, and enjoining the said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad & Warehouse Commission of said state from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges described in said Orders and Acts and from taking any action, step or proceeding against said Railway Company or its officers, directors, agents or employees to enforce any fines, penalties or punishments for violation of said Orders and enjoining the said George T. Simpson, as Attorney General aforesaid, from taking any action, step or proceeding against said Railway Company, its officers or directors, agents or employees to enforce the penalties and punishments specified in said Acts and adjudging the cost of said suit against these appellants:

And Whereas The above named principals of this bond have appealed from the said judgment and decree to the Supreme Court of the United States:

Now Therefore if said appellants shall prosecute their appeal to effect and if they fail to make their appeal good shall answer and pay all costs, then this obligation to be void, otherwise to remain in full force and effect.

In Testimony Whereof the above named principals have
686 hereunto set their hands and seals, and the said Surety, the United States Fidelity & Guaranty Company of Baltimore, Maryland, has caused this bond to be executed by its proper officer thereunto duly authorized, the day and year above written.

GEORGE T. SIMPSON. [SEAL.]
IRA B. MILLS. [SEAL]
CHARLES F. STAPLES. [SEAL]
CHARLES E. ELMQUIST. [SEAL]
THE UNITED STATES FIDELITY & GUARANTY CO., [SEAL]

[Seal U. S. Fidelity & Guaranty Company.]

By CHARLES B. COLEMAN,
Attorney in Fact.

In presence of
THOMAS D. O'BRIEN, *As to Geo. T. Simpson.*
C. F. M'NALLY, *As to All.*
N. L. FLINN, *As to Staples, Mills and Elmquist.*

687 STATE OF MINNESOTA,
County of Ramsey, ss:

Before me, on this 3rd day of May, A. D. 1911, personally appeared George T. Simpson to me known to be one of the persons who signed and executed the foregoing bond and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] C. F. McNALLY,
Notary Public, Ramsey County, Minnesota.

My Commission Expires January 1st, 1915.

STATE OF MINNESOTA,
County of Ramsey, ss:

Before me, on this 4th of May, A. D. 1911, personally appeared Ira B. Mills, Charles F. Staples and Charles E. Elmquist, to me known to be the same persons who signed and executed the foregoing bond and each acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] C. F. McNALLY,
Notary Public, Ramsey County, Minnesota.

My Commission Expires January 1st, 1915.

688 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 4th day of May, 1911, before me, a Notary Public within and for said County and State, personally appeared Charles B. Coleman, to me personally known, who being by me duly sworn upon oath did say that he is the Agent and Attorney-in-fact of and for the United States Fidelity and Guaranty Company, a corporation of Baltimore, Md., created, organized and existing under and by virtue of the laws of the State of Maryland; that the corporate seal affixed to the foregoing within instrument is the seal of said Company; that the said seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said Charles B. Coleman did acknowledge that he executed the said instrument as the free act and deed of said Company.

[NOTARIAL SEAL.] EDITH M. COOKE,
Notary Public, Ramsey Co. Minn.

My Commission Expires June 1, 1913.

(Endorsed:) Bond on Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

689 UNITED STATES OF AMERICA:

Circuit Court, Eighth Circuit.

Citation.

United States of America to David C. Shepard, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for District of Minnesota, Third Division, wherein George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist are appellants and you are defendant in error to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Judge of Circuit Court of United States, District of Minnesota this 2nd day of May, A. D. 1911.

WALTER H. SANBORN,
Judge of Circuit Court of the United States,
District of Minnesota.

Due Service of the foregoing Citation by Copy at St. Paul, Minnesota is hereby admitted this 2nd day of May, 1911.

JARED HOW,
PIERCE BUTLER,
WILLIAM D. MITCHELL,
Solicitors for Defendant in Error.

[Endorsed:] Entered. No. 857. Equity. United States Circuit Court, District of Minnesota, 3d Division. David C. Shepard vs. Northern Pacific Ry. Co. et al., Defendant. Citation. Filed May 4, 1911. Louise B. Trott, Clerk.

690 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Louise B. Trott, Clerk of said Circuit Court, do hereby certify and return to the Honorable the Supreme Court of the United States, that the foregoing, consisting of 690 pages, numbered consecutively from 1 to 690 inclusive, is a true and complete transcript of the Records, Process, Pleadings, Orders, Final Decree and all other proceedings in said cause, (except the printed copies of Testimony, consisting of 7 volumes and one volume of complainants' and one volume of Defendant's Exhibits also Copies of Abridged Reports

to State of Minnesota for 1907-1908 and 1909 which are certified separately and returned with this return,) and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Saint Paul, in the District of Minnesota, this 10th day of May, A. D. 1911.

[U. S. Circuit Court Seal, Dist. of Minnesota, Third Division.]

LOUISE B. TROTT, *Clerk*.

Endorsed on cover: File No. 22,675. Minnesota C. C. U. S. Term No. 599. George T. Simpson et al., appellants, vs. David C. Shepard. Filed May 15th, 1911. File No. 22,675.

PAGE BOUN

VERTICAL IN BOOK

Copy of Abstract of

~~Subject~~ ANNUAL REPORT

OF THE

Northern Pacific Railway Company.

TO THE

Railroad and Warehouse Commission

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, ~~1906~~ 1907.

(Endorsed)
FILED
May 8th 1911
LOUISE B TROTT
Clerk.

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF SHARES.	TOTAL PAR VALUE AUTHORIZED.	TOTAL AMOUNT ISSUED AND OUTSTANDING.	DIVIDENDS DECLARED DURING YEAR.	
					RATE.	AMOUNT.
Capital Stock: Common,	1550000	100 00	155000000 00	155000000 00	7%	10850000 00
Subscriptions to New Capital Stock of $93000000 shares have been offered to the present stock holders at par. and payments on subscription have been received prior to June 30 1907 amounting to $14721100.37	950000	100 00	95000000 00			
Preferred,	✓					
TOTAL,	2500000		250000000 00	155000000 00		10850000 00

MANNER OF PAYMENT FOR CAPITAL STOCK.	NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER SHARES ISSUED AND OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash: Common,	None See note above				
Preferred,					
Issued for Construction: Common;					
Preferred,					
Issued for Reorganization: Common,					
Preferred,					
Issued for purchase of N.P.R.R.Co's property			1550000	155000000 00	
TOTAL,					

FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME. DATE OF ISSUE.	TIME. WHEN DUE.	AMOUNT OF AUTHORIZED ISSUE.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	CASH REALIZED ON AMOUNT ISSUED.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
St. P. & N. P. Ry Co										
Genl. Mtge.	1883	1923			50,210,000.00		6	Feb. Aug.	4,812,600.00	4,816,490.00
Western R.R. of Minnesota Mtg	1877	1907			1,800,000.00	Matured, but not presented for redemption			18,611.68	22,310.00
Nor. Pac. Ry Co										
Prior Lien Mtge	1897	1997	130,000,000		105,979,500.00		4	Jan. & July 1st	4,169,000.00	4,182,480.00
Genl. "	1897	2047	60,000,000		60,000,000.00		3	Feb. May Aug. Nov.	1,800,000.00	1,797,487.50
St. Paul-Bal. Br.	1900	1996	20,000,000		7,938,000.00		4	June-Dec.	303,190.00	303,540.00
St. Paul-Duluth R.R. Co.										
First Mtge	1881	1931	1,000,000		1,000,000.00		5	Feb. Aug.	50,000.00	50,050.00
Second "	1887	1917	2,000,000		2,000,000.00		5	Apl. Oct.	100,000.00	100,850.00
First Consol. Mtge	1898	1968	5,000,000		1,000,000.00		4	June. Dec.	40,000.00	39,320.00
Taylors Falls & Lake Superior R.R. 1st Mtge	1884	1914	210,000		210,000.00		6	June. July	12,600.00	12,600.00
Duluth Short Line Ry 1st Mtge	1886	1916	500,000		500,000.00		5	Mch. Sept.	25,000.00	24,775.00
Minneapolis & Duluth R.R. 1st Mtge	1877	1907			600,000.00	Matured, but not presented for redemption			16,333.33	20,282.50
Nor. Pac. - Gt. Nor. Joint C. B. & Q. Collateral Bonds	1901	1921	222,400,000	215,226,000		Pledged as collateral for C.B.&Q.R.R. Co.	4	Jan. & July 1st	Interest paid by C. B. & Q. Ry Co.	
			N. P. Ry Co proportion		107,613,000.00	Stock				
TOTAL: Mortgage Bonds,					186,667,100.00				7,015,995.01	7,034,340.00
Miscellaneous Obligations,					107,613,000.00					
Income Bonds,										
GRAND TOTAL,					294,280,100.00				7,015,995.01	7,034,340.00

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Car & Loco Trust Series B Geo F Church Trustee	June 15 '99	4 years	18 semi ann	300 Box Cars 3 Locomotives	Until full payment is made and all obligations on the part of the Railroad Company are complied with, the title to the equipment remains in the trustee, his successors or assigns.
Locomotive Trust Series C Geo F Church Trustee	June 15 '99	4 years	18 semi ann	3 Locomotives	

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS—PRINCIPAL.		DEFERRED PAYMENTS—INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
Car & Loco Trust Series B	2408400	2901063 6	2955804	Interest computed with the principal				
Locomotive Trust Series C	364950	439572 6	671796					
TOTAL,	2773350.	3340636.	3627600.					

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bonds—Page 19,		186671000 00	7015995 01	7034340 00
Miscellaneous Obligations—Page 19,		107613000 00		
Income Bonds—Page 19,				
Equipment Trust Obligations—Page 21,		34276 00	Company Bank Reformed	
TOTAL.		294316376 00	7015995 01	7034340 00

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
		None					
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1906.	
Cash,	11899998 16	Receiver's Certificates,	
Bills Receivable,	250425 23	Loans and Bills Payable,	
Due from Agents,	871352 77	Audited Vouchers and Accounts,	713283 505
Due from Solvent Companies and Individuals,	587134 731	Wages and Salaries,	325313 570
Net Traffic Balances due from other Companies,		Net Traffic Balances due to other Companies,	56734 76
Other Cash Assets [Excluding "Materials and Supplies"].[1]		Dividends not Called for,	27143 550
Portland & Seattle Ry Co Construction Advances	17095917 87	Matured Interest Coupons Unpaid (Including Coupons due July 1).	113627 425
Clearwater Short Line - Joint Line	2234378 57	~~Rents due July 1~~, Taxes Accrued	153839 494
Big Fork & International Falls Ry Co	311141 17	~~Miscellaneous~~, Reserve Fund	630976 686
TOTAL—CASH AND CURRENT ASSETS,	38309184 08	TOTAL—CURRENT LIABILITIES,	22141492 00
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	16167692 08
TOTAL,	38309184 08	TOTAL,	38309184 08

[1] Materials and Supplies on hand, $ 5889931 12

[See General Balance Sheet—Page 49.]

RECAPITULATION.

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

ACCOUNT.	TOTAL AMOUNT OUTSTANDING.	APPORTIONMENT. TO RAILROADS.	APPORTIONMENT. TO OTHER PROPERTIES. [Page 22.]	AMOUNT PER MILE OF LINE. MILES.	AMOUNT PER MILE OF LINE. AMOUNT.	REMARKS.
Capital Stock—Page 17,	155 000 000	155 000 000 00		5911 75	26219	
Bonds—Page 19 ["Grand Total"],	186 667 100	186 667 100 00		5911 75	31576	
- - N.P.G.N. Joint	107 613 000	107 613 000 00				
Equipment Trust Obligations—Page 21,	36 276	36 276 00		5911 75	6	
TOTAL,	449 316 376 00	449 316 376 00			57801	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

NAME OF ROAD.	CAPITAL STOCK.	FUNDED DEBT.	TOTAL.	AMOUNT PER MILE OF LINE. MILES.	AMOUNT PER MILE OF LINE. AMOUNT.
Northern Pacific Ry Co	155 000 000	186 703 376 00	341 703 376	5911 75	57801
Washington Central Ry Co	1 000 000	1 853 000	2 853 000	130 63	21840
GRAND TOTAL,					

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS.

ITEM.	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1906	TOTAL COST TO JUNE 30, 1907.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.			
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO SPECIAL FUNDS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.		
CONSTRUCTION:					
1. Engineering,				2348369 0	
2. Right of Way and Station Grounds,				1109324 69	
3. Real Estate,				99924 38	
4. Grading,				2918505 51	
5. Tunnels,				5112	
6. Bridges, Trestles, and Culverts,				1803656 44	
7. Ties,				2050206 3	
8. Rails,				7972118 8	
9. Track Fastenings,				1372575	
10. Frogs and Switches,				377421 0	
11. Ballast,				1133436 1	
12. Track Laying and Surfacing,				1990802 6	
13. Fencing Right of Way,				57116 8	
14. Crossings, Cattle Guards, and Signs,				500745	
15. Interlocking or Signal Apparatus,				484522	
16. Telegraph Lines,				341308	
17. Station Buildings and Fixtures,				473800	
18. Shops, Roundhouses, and Turntables,				2063722 1	
19. Shop Machinery and Tools,				11953	
20. Water Stations,				652878 2	
21. Fuel Stations,				698559	
22. ~~Grain Elevators~~, Terminals				2301321 8	
23 ~~Storage Warehouses~~, Net proceeds of Land Dept				1645132 32	
24. ~~Docks and Wharves~~, Property sold				2994790 8	
25. ~~Electric Light Plants~~, Balance of premium on sale and					
26. Electric-Motive-Power Plants, exchange of securities				2859500	
27. Gas-Making Plants,					
28. Miscellaneous Structures,				3603374	
29. Legal Expenses,					
30. ~~Interest and Discount~~, Transportation Other Items				*3483643	
31. General Expenses,				3470	
TOTAL CONSTRUCTION, Additions + Betterments				37309168 3	*18162597 90 / 879421249 309594280 96	21893514 75 / 318388493 45

Only ordinary maintenance of property charged to Operating Expenses.

None

None

It is impracticable to give cost by classification

27

* Transferred from Profit + Loss

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS—CONTINUED.

ITEM.	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1906.	TOTAL COST TO JUNE 30, 1907.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.			
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO SPECIAL FUNDS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.	
EQUIPMENT:					
1. Locomotives,				4107774 32	
2. Passenger Cars,				394800 00	
3. Sleeping, Parlor, and Dining Cars,				341189 51	
4. Baggage, Express, and Postal Cars,				114666 89	
5. Combination Cars,					
6. Freight Cars,				6206590 73	
7. Other Cars of all classes,				131441 83	
8. Floating Equipment,					
9. Discount and Commission,				1117816 328	
Less amount charged off for depreciation				392675 300	
TOTAL EQUIPMENT,	✓	✓	✓	5251410 28	32044259 79	37295670 07
TOTAL CONSTRUCTION—PAGE 27,				8794212 49	309594280 96	318388493 45
GRAND TOTAL CONSTRUCTION, EQUIPMENT, ETC.,				14045622 77	341638540 75	355684163 52
Total Cost Construction, Equipment, Etc.—State of Minnesota.					
Cost of Construction per mile of line,	Inasmuch as property purchased at foreclosure embraced nearly 31,000,000 acres of land, it would be manifestly misleading to figure cost per mile on amount shown				
Cost of Equipment per mile of line,					
TOTAL COST PER MILE OF LINE,					
TOTAL COST PER MILE OF LINE—MINNESOTA,					

QUESTION.	ANSWER.	REMARKS.
1. Does the absence of any entry under the heading "Included in Operating Expenses" (page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?	1. Yes.	
2. Do the amounts entered under the heading "Included in Operating Expenses" (page 27 or 29) cover all expenditures for permanent improvements or betterments charged to Operating Expense Accounts?	2. ✓	

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,	68447453 65	
Less Operating Expenses—Page 45,	37601938 12	
INCOME FROM OPERATION,		30845515 53
DEFICIT,		
Dividends on Stocks Owned—Page 37,	✓	
Interest on Bonds Owned—Page 39,	39782500	
Miscellaneous Income—Page 41,	18057721	
INCOME FROM OTHER SOURCES,		2203597 21
TOTAL INCOME,		33049112 74
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued—Page 23,	70159901	
Interest on Interest-bearing Current Liabilities, etc.,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,	1604630	
Taxes—Page 79, A,	23987100	
Permanent Improvements—Page 29,		
Other Deductions,		
TOTAL DEDUCTIONS FROM INCOME,		9575 18331
NET INCOME,		23473 92943
DEFICIT,		
Dividends, 7 per cent, Common Stock—Page 17,	10850000 00	
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		10850000 00
Surplus from Operations of Year ending June 30, 1905,		12623929 43
Deficit from Operations of Year ending June 30, 1904,		
Surplus on June 30, 1905, [From "General Balance Sheet," 1905 Report.]		19936979 40
Deficit on June 30, 1905, [From "General Balance Sheet," 1905 Report.]		
Additions for Year, See page 30		18169980 58

TOTAL,	27750000 00		27750000 00
GRAND TOTAL—A AND B,	60334500 00		52149094

EARNINGS FROM OPERATION—STATE OF MINNESOTA.

ITEM.	Gross Earnings from Business Originating and Terminating in State of Minnesota. See Note 1, Page 34.	Deductions Amount of Repayments, &c.	ACTUAL EARNINGS.	Gross Earnings from Interstate Business According to Rules of Minnesota R.R. and Warehouse Commission. See Note 2, Page 34.	Deductions Amount of Repayments, &c.	ACTUAL EARNINGS	Total Gross Earnings including Local and Interstate Business According to State of Minnesota.
PASSENGER:							
Passenger Revenue,	1886732/6			1800156821			
Less Repayments—							
Tickets Redeemed,		368015			687149		
Excess Fares Refunded,							
Other repayments,		296318			498622		
Total Deductions,		664333			1185771		
TOTAL PASSENGER REVENUE,			10800888 83			17882990 0	25693878 83
Mail,			208 56756				208 56756
Express,			782 5034			1938 1177	2720 6211
Extra Baggage and Storage,			107891			350 0079	361 7920
Other items, Sleeping Cars	Same apportion		558 9592				558 9592
Special Trains			58900			27899	86799
TOTAL PASSENGER EARNINGS,			14245 7006			2017 3905 5	3441 9606 1
FREIGHT:							
Freight Revenue,	2880 16592			7701 45262			
Less Repayments—							
Overcharge to Shippers,		229147 2			290 3846		
Other repayments,							
Total Deductions,		229147 2			290 3846		
TOTAL FREIGHT REVENUE,			2857 29420			7674 41417	10531 69837
Stock Yards,							
Elevators,							
Other items, Storage & Demurrage	21 56814						
Wharfage & Dockage	7380 92		289 4104				289 4104
TOTAL FREIGHT EARNINGS,			2896 23524			7674 41417	10560 63941
TOTAL PASSENGER AND FREIGHT EARNINGS,			4310 79530			9691 80472	14002 60002
OTHER EARNINGS FROM OPERATION:							
Switching Charges—Balance,			225 3234 0				225 3234 0
Car Per Diem and Mileage—Balance,							
Hire of Equipment—Balance,							
Telegraph and Telephone Companies,			32 7434				32 7434
Rents from Tracks, Yards, and Terminals—Page 41,			235 9045				235 9045
Rents not otherwise provided for,			86 3003				86 3003
Other sources, Dining Cars	2379 08						
Hotels	13796 20						
Lunch Stands	4932 09						
Sleeping Cars	10 29755	Same apportion.	1859822				3859822
TOTAL OTHER EARNINGS,			548 51645				548 51645
Total Gross Earnings from Operation—Minnesota,	(Local and Interstate)		4859 31175			9691 80472	14551 11647
Total Gross Earnings from Operation—Entire Line.							6844 95465

STOCKS OWNED.

A. RAILWAY STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
Washington Central Ry	1000000 00			221279 94
Clearwater Short Line Ry	212720000			212720000
Lake Superior Terminal & Transfer Ry	514000			116100
St Paul Union Depot Co	598500			598500
Missouri River Ry	1000000			1000000
Western Dakota Ry	1000000			1000000
TOTAL,	3258450 00			24399309 94

B. OTHER STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
Northwestern Improvement Co	2775000 00			2775000 00
TOTAL,	2775000 00			2775000 00
GRAND TOTAL—A AND B,	6033450 00			52149309 94

BONDS OWNED.

A. RAILWAY BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
N. P. Ry. General Lien	70400000	4%	1981500	53428311
" Prior Lien	155200000	4%	156000	155347154
Nor. Pac. - Gt. Nor. Joint	130400000	4%	8385000	149869537
N.P. Ry St. Paul-Duluth division	36100000	4%		36100000
Washington Central Ry	31500000	4%	1260000	29137500
TOTAL,	423600000.		11702500.	423882502

B. OTHER BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Northwestern Improvement Co	7000000000	4%	280000000	7000000000
TOTAL,	7000000000		280000000	7000000000
GRAND TOTAL—A & B	11436000000.		397825000.	11238825020

RENTALS RECEIVED.

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY USING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS: Yards and Terminals:	Duluth, Superior, Stillwater	Chi. St. P. M. & O. Ry	271787	
	Duluth & Superior	Dul. & So. Shore & Atl. Ry	720300	
	Superior	Lake Sup. Term. & Ry. Ry	10000	
	Ingdale, Carlton, Cloquet, Duluth, Tower, Cusulin, Spokane	Great Northern Ry	2119173	
	St. Paul, Minneapolis	Chi. & Gt. Western Ry	4421412	
		Minneapolis & St. Louis R.R.	5526740	
		M. St. P. & S. M. Ry	6971922	
TOTAL,	Stillwater Minn	Chi. Mil. & St. P. Ry	480000 ✓	
YARDS:	Duluth	Dul. & Iron Range R.R.	2446325 ✓	
		Dul. Miss. & Nor. Ry	1383950 ✓	
	Brainerd	Minn. & Int. Ry	96000 ✓	
	St Paul. Minneapolis	Wisconsin Central Ry	1429356 ✓	
	Huntley. Billings. Mont	Chi. Burl. & Q. R.R.	1740592 ✓	
	Helena. Butte	Montana Central Ry	418636 ✓	
	Silver Bow	Oregon Short Line	1706371 ✓	
	Lowell, Snohomish Wn	Everett Ry. & Electric Co	625000	
TOTAL,	Goble. Portland Ore	Astoria & Col. Riv. R.R.	2648183 ✓	
TERMINALS:				
TOTAL,				
		GRAND TOTAL RENTS RECEIVED, [For entry on page 35.]		32583747

MISCELLANEOUS INCOME.

ITEM.	GROSS INCOME.	EXPENSES.	NET MISCELLANEOUS INCOME.
Rentals from leased property	2401485 3		
Interest on bank balances, sundry accounts	1957382 8		
Interest & Dividends on securities held by Trustee of Prior Lien Mortge. as part of Nor. Pac. Estate	5270608 0		
Net Receipts from Stock Yards	164057		
Net receipts from Operating Dept. Land sold	91123		
	1965499 41		
Deduct. Interest & Commissions on Subscriptions to New Capital Stock	1597270		18057721
TOTAL,			18057721

OPERATING EXPENSES.

ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:	
1. Repairs of Roadway,	5947136 84
2. Renewals of Rails,	329258 60
3. Renewals of Ties,	786415 68
4. Repairs and Renewals of Bridges and Culverts,	664105 32
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards,	202197 91
6. Repairs and Renewals of Buildings and Fixtures,	948970 03
7. Repairs and Renewals of Docks and Wharves,	126091 82
8. Repairs and Renewals of Telegraph,	55559 61
9. Stationery and Printing,	9799 94
10. Other Expenses.	
TOTAL,	9069535 75
MAINTENANCE OF EQUIPMENT:	
11. Superintendence,	140419 37
12. Repairs and Renewals of Locomotives,	2173666 43
13. Repairs and Renewals of Passenger Car	453507 77
14. Repairs and Renewals of Freight Cars,	2572218 38
15. Repairs and Renewals of Work Cars,	190066 37
16. Repairs and Renewals of Marine Equipment,	18388 74
17. Repairs and Renewals of Shop Machinery and Tools,	104230 50
18. Stationery and Printing,	46897 0
19. Other Expenses,	10491 47
TOTAL,	2651128 73
CONDUCTING TRANSPORTATION:	
20. Superintendence,	547965 11
21. Engine and Roundhouse Men,	3783500 70
22. Fuel for Locomotives,	5967953 15
23. Water Supply for Locomotives,	234057 28
24. Oil, Tallow, and Waste for Locomotives,	144328 23
25. Other Supplies for Locomotives,	80067 51
26. Train Service,	2465277 97
27. Train Supplies and Expenses,	585920 37
28. Switchmen, Flagmen, and Watchmen,	1220475 06
29. Telegraph Expenses,	86565 30
30. Station Service,	2155902 24
31. Station Supplies,	177261 74
32. Switching Charges—Balance,	
33. Car Per Diem and Mileage—Balance,	1048953 23
34. Hire of Equipment—Balance,	41204 04
Total carried forward,	19318517 93

OPERATING EXPENSES—CONTINUED.

ITEM.	AMOUNT.
CONDUCTING TRANSPORTATION—Continued.	
Total brought forward,	193185793
35. Loss and Damage,	5121194
36. Injuries to Persons,	5239269
37. Clearing Wrecks,	2054295
38. Operating Marine Equipment,	508853
39. Advertising,	1037965
40. Outside Agencies,	4211338
41. Commissions,	-
42. Stock Yards and Elevators,	-
43. Rents for Tracks, Yards, and Terminals—Page 47, B,	48512776
44. Rents of Buildings and other Property,	637472
45. Stationery and Printing,	1443541
46. Other Expenses,	3927339
TOTAL,	218109635
GENERAL EXPENSES:	
47. Salaries of General Officers,	2395638
48. Salaries of Clerks and Attendants,	3509787
49. General Office Expenses and Supplies,	638158
50. Insurance,	1440469
51. Law Expenses,	1174858
52. Stationery and Printing (General Offices),	590099
53. Other Expenses,	1012720
TOTAL,	10703572 9
RECAPITULATION OF EXPENSES:	
54. Maintenance of Way and Structures,	90695 3575
55. Maintenance of Equipment,	56511 2873
56. Conducting Transportation,	218109635
57. General Expenses,	10703572 9
GRAND TOTAL,	376093812
PERCENTAGE OF EXPENSES TO EARNINGS—ENTIRE LINE, 54.94 %	
OPERATING EXPENSES—STATE OF MINNESOTA,	
Maintenance of Way and Structures,	14607914
Maintenance of Equipment,	12221 4515
Conducting Transportation,	4779 42981
General Expenses;	2156 6485
TOTAL,	7678 03095
PERCENTAGE OF EXPENSES TO EARNINGS—MINNESOTA. 52.77%	

RENTALS PAID.

A. RENTS PAID FOR LEASE OF ROAD.

NAME OF ROAD.	INTEREST ON BONDS GUARANTEED.	DIVIDENDS ON STOCK GUARANTEED.	CASH.	TOTAL.
Washington Central Ry	74,120.00			74,120.00
Oregon Short Line Ry			51,331.86	51,331.86
Minneapolis & St Louis R.R.			8,617.44	8,617.44
Great Northern Ry			26,400.00	26,400.00
TOTAL RENTS—A, [For entry on page 31 (or 33).]	74,120.00		86,349.30	160,469.30

B. RENTS PAID FOR LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY OWNING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:	Superior Wis.	Lake Sup. Term. & Ry. Co	30.00	
	Ashland -	G. N. W. Ry Co	50.04	
	- -	Wis. Central Ry Co	50.04	
	Minneapolis Minn.	M. & St. L. R.R. Co	2,151.95	
	St Anthony Pk -	C. G. W. Ry Co	327.49	
TOTAL.,	Bet. St Paul & Minneapolis	Gt. Northern Ry Co	328.71	
YARDS:	St. Paul Minn.	C. B. & Q. Ry Co	2,190.52	
	Bet. Nelson Jct. & St Cloud	Gt. Northern Ry Co	13,332.16	
	Bet. Helena & Bonneman Mont.	Mont. Cent. Ry	4,827.18	26,512.09
Terminals:	Superior Wis.	Lake Sup. Term. & Ry. Co	45,565.32	
	Ashland -	Wis. Cent. Ry Co	1,899.51	
	Duluth Minn	Dul. Union Dep. & Ry. Co	25,419.74	
TOTAL.,	Minneapolis -	Mpls. Union Depot Co	38,442.40	
TERMINALS:	Minn. Transfer -	Minn. Trans. Ry Co	1,800,199.90	
	St Paul -	St. Paul Union Depot Co	32,643.78	
	Adrian Wash	Great Nor. Ry Co	1,068.28	
	Seattle -	Seattle Union Depot Co	32,123.26	
	Portland Ore	Nor. Pac. Terminal Co	161,403.32	518,585.51
Less amount collected from other Companies for Terminal Facilities Nor. Pac. R.R. 22,967.48 Gt. Nor. Ry 36,002.36		Use of property of St Paul		545,097.60
TOTAL.,				59,969.84
		GRAND TOTAL RENTS—B, [For entry on page 43, Item 43.]		485,127.76

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1906. ITEM.	JUNE 30, 1906. TOTAL.	ASSETS.	JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	YEAR ENDING JUNE 30, 1907. INCREASE.	YEAR ENDING JUNE 30, 1907. DECREASE.
	291,431,683.06	Cost of Road—Page 27,		318,388,493.45	26,956,810.39	
	32,044,259.79	Cost of Equipment—Page 29,		37,295,670.07	5,251,410.28	
	5,191,330.94	Stocks Owned—Page 37,		5,214,930.94	23,600.00	
	7,789,547.50	Bonds Owned—Page 39,		11,238,825.02	3,449,277.52	
		Other Permanent Investments,				
	2,000,000.00	Insurance Fund Assets & Securities in Lands of Trustees of St. Paul		2,120,460.20	120,460.20	
	1,497,465.88	Duluth Dock Mtge as collateral Securities in Lands of Trustees of N.P.		1,405,773.89		91,710.99
	109,113,909.76	G.N. Joint Bonds as collateral		109,114,309.76	400.00	
		Lands Owned,				
	3,229,168.64	Land Dept. Current Assets		2,876,275.28		352,893.16
	32,247,790.60	Cash and Current Assets—Page 23,		38,309,154.08	6,061,363.48	
	590,051.5	Betterment & Enlargement of Road Assets				590,051.5
		OTHER ASSETS:				
		Equipment Trusts,				
	3,465,330.80	Materials and Supplies,		5,889,931.12	2,424,600.32	
	1,682,151.07	Sinking Fund .		1,618,329.06		63,822.01
		Sundries,				
	304,530.6	Material & Supplies Acct		304,530.6		
		Profit and Loss—Page 31 (or 33),				
	489,782,115.25	GRAND TOTAL,		533,502,636.13	43,720,520.88	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1905. (6) ITEM.	JUNE 30, 1905. (6) TOTAL.	LIABILITIES.	JUNE 30, 1906. (7) ITEM.	JUNE 30, 1906. (7) TOTAL.	YEAR ENDING JUNE 30, 1906. (7) INCREASE.	YEAR ENDING JUNE 30, 1906. (7) DECREASE.
	155000000000	Capital Stock—Page 17,		156000000000		
		Subscriptions to New Capital Stock		1472110037	1472110037	
	18634581268	Funded Debt—Page 23,		18670337600	3575632	
	1832207746	Current Liabilities—Page 23,		2214149200	38194145 54	
		Real Estate Mortgages,				
	54962665	Accrued Interest on Funded Debt not yet payable,		54200166		760499
	1303906	Liquidation Fund		6549887	5045981	
	200000000	Insurance Fund		212046020	12046020	
	10761260000	N. P. & N. Joint bonds & scrip		10761300000	40000	
	1993697940	Profit and Loss—Page 31 (or 33),		4459570703	2465872763	
	48978211525	GRAND TOTAL,		53350263613	4372052088	

TRAFFIC AND MILEAGE STATISTICS—STATE OF MINNESOTA.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	1854714			
2. Number of passengers carried one mile,	139424361			
3. Number of passengers carried one mile per mile of road,	142265			
4. Average distance carried,* miles,	75.17			
5. Total passenger *revenue*—Page 35,		2868387	83	
6. Average amount received from each passenger,†			1 54	6 54
7. Average receipts per passenger per mile,†			02	0 57
8. Total passenger *earnings*—Page 35,		3441960	61	
9. Passenger *earnings* per mile of road,*		35121	10	
10. Passenger *earnings* per train mile,†			1 66	4 82
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	7352886			
12. Number of tons carried one mile,	1229128795			
13. Number of tons carried one mile per mile of road,	125417.5			
14. Average distance haul of one ton,* miles,	167.16			
15. Total freight *revenue*—Page 35,		10531698	37	
16. Average amount received for each ton of freight,†			1 43	2 32
17. Average receipts per ton per mile,†			00	8 57
18. Total freight *earnings*—Page 35,		10560639	41	
19. Freight *earnings* per mile of road,*		107758	3	
20. Freight *earnings* per train mile,†			3 98	3 65
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		14551116	47	
22. Gross earnings from operation per mile of road,*		148476	2	
23. Gross earnings from operation per train mile,†			3 18	3 92
24. Operating expenses—Page 45,		7678030	95	
25. Operating expenses per mile of road,*		78344	8	
26. Operating expenses per train mile,†			1 68	0 03
27. Income from operation—Page 31,		6873085	52	
28. Income from operation per mile of road,*		70131	4	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	12209868			
30. Average number of passenger cars per train mile,*	5.91			
31. Average number of passengers per train mile,	67			
32. Mileage of loaded freight cars—North or East,	30384294			
33. Mileage of loaded freight cars—South or West,	38866595			
34. Mileage of empty freight cars—North or East,	12709450			
35. Mileage of empty freight cars—South or West,	6682846			
36. Average number of freight cars per train mile,*	33.44			
37. Average number of loaded cars per train mile,*	26.12			
38. Average number of empty cars per train mile,*	7.32			
39. Average number of tons of freight per train mile,*	463.65			
40. Average number of tons of freight per loaded car mile,*	17.75			
41. Average mileage operated during year,*	9803			
TRAIN MILEAGE:	Miles.	Miles.		
42. Mileage of revenue passenger trains,	....	1919189		
43. Mileage of locomotives employed in "helping" passenger trains,	21077	....	....	....
44. Percentage of "helping" to revenue train mileage,* 1.10 per cent,		....	....	....
45. Mileage of revenue mixed trains,	....	148279		
46. Mileage of revenue freight trains,	....	2502714		
47. Mileage of locomotives employed in "helping" mixed and freight trains,	534269	....	....	....
48. Percentage of "helping" to revenue train mileage,* 20.15 per cent,		....	....	....
49. TOTAL REVENUE TRAIN MILEAGE,	....	4570182		
50. Mileage of nonrevenue trains,	....	883300		

*Two (2) decimal figures required. †Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	6953424			
2. Number of passengers carried one mile,	72274259			
3. Number of passengers carried one mile per mile of road,	132765			
4. Average distance carried,* miles,	10.39			
5. Total passenger *revenue*—Page 35,		16230874	02	
6. Average amount received from each passenger,†			2.34	861
7. Average receipts per passenger per mile,†			02	260
8. Total passenger *earnings*—Page 35,		14192079	92	
9. Passenger *earnings* per mile of road,*		352956		
10. Passenger *earnings* per train mile,†			1.98	397
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	16741470			
12. Number of tons carried one mile,	550442098			
13. Number of tons carried one mile per mile of road,	101164			
14. Average distance haul of one ton,* miles,	328.79			
15. Total freight *revenue*—Page 35,		47665243	59	
16. Average amount received for each ton of freight,†			2.84	752
17. Average receipts per ton per mile,†			00	866
18. Total freight *earnings*—Page 35,		47895180	63	
19. Freight *earnings* per mile of road,*		8798	33	
20. Freight *earnings* per train mile,†			3.53	936
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		68447453	65	
~~22. Gross earnings from operation per mile of road,*~~		12573	77	
23. Gross earnings from operation per train mile,†			4.84	823
24. Operating expenses—Page 45,		37601938	12	
25. Operating expenses per mile of road,*		6907	46	
26. Operating expenses per train mile,†			1.67	456
27. Income from operation—Page 31,		30845515	53	
28. Income from operation per mile of road,*		5666	31	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	62717222			
30. Average number of passenger cars per train mile,*	6.48			
31. Average number of passengers per train mile,	75			
32. Mileage of loaded freight cars—North or East,	15718695			
33. Mileage of loaded freight cars—South or West,	15231801			
34. Mileage of empty freight cars—North or East,	3277942			
35. Mileage of empty freight cars—South or West,	4994184			
36. Average number of freight cars per train mile,*	28.98			
37. Average number of loaded cars per train mile,*	22.87			
38. Average number of empty cars per train mile,*	6.11			
39. Average number of tons of freight per train mile,*	406.77			
40. Average number of tons of freight per loaded car mile,*	17.78			
41. Average mileage operated during year,*	5443.67			
TRAIN MILEAGE:	Miles.	Miles.		
42. Mileage of revenue passenger trains,	... ...	892	2675	
43. Mileage of locomotives employed in "helping" passenger trains,	51.4901	....	....	....
44. Percentage of "helping" to revenue train mileage,* 5.77 per cent,		....	....	....
45. Mileage of revenue mixed trains,	... ...		750	859
46. Mileage of revenue freight trains,	... ...	12	781	289
47. Mileage of locomotives employed in "helping" mixed and freight trains,	2845.365	....	....	....
48. Percentage of "helping" to revenue train mileage,* 21.01 per cent,		....	....	....
49. TOTAL REVENUE TRAIN MILEAGE,	... ...	22	454	823
50. Mileage of nonrevenue trains,	... ...	2	412	726

* Two (2) decimal figures required. † Five (5) decimal figures required.

FREIGHT TRAFFIC MOVEMENT—STATE OF MINNESOTA.

[COMPANY'S MATERIAL EXCLUDED.]

COMMODITY.		FREIGHT ORIGINATING ON THIS ROAD. Whole Tons.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS. Whole Tons.	TOTAL FREIGHT TONNAGE. Whole Tons.	Per Cent.
Products of Agriculture.	Grain,	1231123	351510	1582633	21.52
	Flour,	156246	3851	160097	2.18
	Other Mill Products,	84412	4441	88853	1.21
	Hay,	47521	4267	51788	.70
	Tobacco,				
	Cotton, Hops.	2251	1057	3308	.04
	Fruit and Vegetables,	91070	28095	119165	1.62
Products of Animals.	Live Stock,	149799	5815	155614	2.12
	Dressed Meats,	8631	13865	22496	.31
	Other Packing-House Products,	3751	3296	7047	.10
	Poultry, Game, and Fish,	22129	2339	24468	.33
	Wool,	12925	516	13441	.18
	Hides and Leather,	3767	1493	5260	.07
Products of Mines.	Anthracite Coal,	307061	6826	313887	4.27
	Bituminous Coal,	761665	19117	780782	10.62
	Coke,	25049	11248	36297	.49
	Ores,	134045	2886	136931	1.86
	Stone, Sand, and other like articles,	206083	8281	214364	2.92
Products of Forests.	Lumber,	1120769	110443	1237212	16.83
	Other Forest Products	485234	259237	744470	10.12
Manufactures.	Petroleum and other Oils,	23934	12495	36429	.50
	Sugar,	6132	8179	14311	.19
	Naval Stores,				
	Iron, Pig and Bloom,	19457	6261	25718	.35
	Iron and Steel Rails,	22735	72952	95687	1.30
	Other Castings and Machinery,	51496	39562	91058	1.24
	Bar and Sheet Metal,	7066	14213	21279	.29
	Cement, Brick, and Lime,	109146	57524	166670	2.28
	Agricultural Implements,	12508	16535	29043	.39
	Wagons, Carriages, Tools, etc.,	3960	6990	10950	.15
	Wines, Liquors, and Beers,	31501	19435	50936	.69
	Household Goods and Furniture,	17288	23089	40377	.55
	Other Iron & Steel	23227	56182	79409	1.08
Merchandise,					
Miscellaneous:	Other commodities not mentioned above,	678827	314078	992905	13.50
	TOTAL TONNAGE—MINNESOTA,	5866808	1486078	7352886	100.00
	TOTAL TONNAGE—ENTIRE LINE,	13717509	3023961	16741470	100.

MILEAGE.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE	LINE REPRESENTED BY CAPITAL STOCK. MAIN LINE.	LINE REPRESENTED BY CAPITAL STOCK. BRANCHES AND SPURS.	LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	* NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.
Miles of single track,	269969	285648	670	19473		5256	581016	3837	2964	572796
Miles of second track,	16956	153		169		7327	24605	6031		23443
Miles of third track,	158						158	158		158
Miles of fourth track,										
Miles of yard track and sidings,	116725	31093		3330		1564	*152712	7504	13268	139077
TOTAL MILEAGE OPERATED (All Tracks).	403808	316894	670	22972		14147	758491	17530	16232	735474

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK. MAIN LINE.	LINE REPRESENTED BY CAPITAL STOCK. BRANCHES AND SPURS.	LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.
Wisconsin	8685	5783				106	145574		8	144450
Minnesota	57134	46243				1385	1047762	396	1366	1020211
North Dakota	37754	80632				56	1184442		830	1175556
Montana	85378	51421	670	6470		3617	1474796		750	1431229
Idaho	8334	20187					285521			285521
Washington	68768	81111		13063			1629442	3468		1629442
Oregon	3916	271				92	42779	33		41187
TOTAL MILEAGE OPERATED (Single Track).	269969	285648	670	19473		5256	581016	3837	2964	572796

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK. MAIN LINE.	LINE REPRESENTED BY CAPITAL STOCK. BRANCHES AND SPURS.	TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.	REMARKS.
Wisconsin	8685	5783	14468		18	144450	
Minnesota	57134	46243	1033777	336	1366	1020211	
North Dakota	37754	80632	1183886		830	1175556	
Manitoba		35558	35558			35558	
Montana	85378	51421	136799		750	1360449	
Idaho	8334	20187	28521			28521	
Washington	68768	81111	149879	3468		149879	
Oregon	3916	271	4187	33		4187	
TOTAL MILEAGE OWNED (Single Track).	269969	321206	591175	3837	2964	588211	

MILEAGE—STATE OF MINNESOTA.

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	571.34	462.43				13.85	1047.62	3.36	13.66	1020.11
Miles of second track,	100.29					73.27	173.56	43.38		161.94
Miles of third track,	1.58						1.58	1.58		1.58
Miles of fourth track,										
Miles of yard track and sidings,	341.04	68.98				14.67	424.69	15.36	44.30	377.69
TOTAL MILEAGE OPERATED (ALL TRACKS).	1014.25	531.41				101.79	1647.45	63.68	57.96	1561.32

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF MINNESOTA.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	571.34	462.43				13.85	1047.62	3.36	13.66	1020.11
TOTAL MILEAGE OPERATED (SINGLE TRACK).										

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF MINNESOTA.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	571.34	462.43		1033.77	3.36	13.66	1020.11	
TOTAL MILEAGE OWNED (SINGLE TRACK).								

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TAXES AND ASSESSMENTS OF ALL KINDS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Wisconsin	52 46 6 63					42 37 31		56 97 94
Minnesota				571 413 29		5 01 5 20		576 428 49
North Dakota	366 604 75					1 74 0 42		368 345 17
Montana	468 686 10					2 67 5 88		471 361 98
Idaho	72 765 89					2 62 43		83 528 32
Washington	606 838 27					172 732 94		839 571 21
Oregon	12 478 82					1 82 64		1 266 146
Outside Offices (See p 787)	12 443							12 443
TOTAL,	1639 958 89			571 413 29		187 346 82		2398 719 00

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
TOTAL,								

[Annual Report Form—State Commissions.]

Copy of Abstract of

ANNUAL REPORT

OF

Northern Pacific Railway Company

TO THE

RAILROAD AND WAREHOUSE COMMISSION

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1908.

(Examined)

FILED
May 8th 1909
LOUISE B. TROTT.
Clerk.

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. RATE.	DIVIDENDS DECLARED DURING YEAR. AMOUNT.
Capital Stock:									
Common, Shares to New Capital Stock	155,000	100	15500000	15500000				7%	1085000
Common,	950,000	100	95000000						
Preferred,	None		None	None	None	None			
TOTAL,									

PURPOSE OF THE ISSUE.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER OF SHARES OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,	None	See last sheet			
	Preferred,					
Issued for Construction of New Properties:	Common,					
	Preferred,					
Issued for Additions and Betterments:	Common,					
	Preferred,					
Issued for Purchase of Railway or Other Property:	Common,			155,000	155,000,000	Purchase of A.O.R.R.C. Property
	Preferred,					
Issued for Acquisition of Securities:	Common,					
	Preferred,					
Issued for Reorganization:	Common,					
	Preferred,					
	TOTAL,				155,000,000	

FUNDED DEBT.

CLASS OF BOND OR OBLIGATION.	TERM. Date of Issue.	TERM. Date of Maturity.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
MORTGAGE BONDS:											
[illegible]	1880	1923		8,021,000			8,021,000	6	[illegible]	481,260 -	481,260 -
[illegible]	1897	1997	130,000,000	106,984,500	1,552,000		105,432,500	4	[illegible]	4,277,250 -	4,213,810 -
[illegible]	1897	2047	60,000,000	60,000,000	983,000		59,017,000	3	[illegible]	1,770,510 -	1,788,315 -
[illegible]	1900	1996	20,000,000	7,902,000	961,000		7,541,000	4	[illegible]	301,640 -	301,640 -
[illegible]	1881	1931	1,000,000	1,000,000			1,000,000	5	[illegible]	50,000 -	49,900 -
[illegible]	1889	1917	2,000,000	2,000,000			2,000,000	5	[illegible]	100,000 -	100,575 -
PLAIN BONDS; DEBENTURE NOTES:	1898	1968	50,000,000	10,000,000			10,000,000	4	[illegible]	400,000 -	400,560 -
[illegible] 1st Mtge.	1884	1914	210,000	210,000			210,000	6	[illegible]	12,600 -	12,600 -
[illegible] 1st Mtge.	1886	1911	500,000	500,000			500,000	5	[illegible]	25,000 -	25,625 -
COLLATERAL TRUST BONDS: [illegible] 1st Mtge.	1891	1925	2622,000	2620,000			2620,000	4	[illegible]	104,800 -	52,400 -
[illegible]				All retired						-	5,400 -
[illegible]										-	21 -
INCOME BONDS:											
[illegible]											
MISCELLANEOUS OBLIGATIONS:											
[illegible]											
[illegible]	1901	1921	222,000,000	215,226,000							
[illegible]				107,613,000	2150,000		105,459,000	4	[illegible]	4,304,520 00	4,304,520 00
TOTAL.				297,850,500	5050,000		292,800,500			11,402,427 50	11,374,091 00

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Locomotive Trust Series "C" Equipment Trust	June 15th 99	9 years	18 semi-annual	3 Locomotives	Title full payment is made and all obligations on the part of the Railway Co are complied with the title to the Equipment remains in the Trustee but reversion to assigns

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS.				INTEREST.		
		PRINCIPAL.		INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
Locomotive Trust Co	$6,119.50	$13,757.26	$2,259.32	Interest computed with the Principal				
TOTAL,								

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bonds,	190,237,500	2896000		187341500	7098907.50	7069571.00
Plain Bonds, Debentures, and Notes,						
Collateral Trust Bonds,	107613000	2154000		105459000	4304520.00	4304520.00
Income Bonds,						
Miscellaneous Obligations,						
Equipment Trust Obligations,	2239 [1]			2309 [2]		
TOTAL,	297852739 [3]	5050000		292802739 [4]	11403427.50	11374091.00

PURPOSE OF THE ISSUE.	TOTAL PAR VALUE ISSUED DURING THE YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING THE YEAR.	TOTAL PAR VALUE OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:					
Issued for Construction of New Properties:					
Issued for Additions and Betterments:					
Issued for Purchase of Railway or Other Property:					
Issued for Acquisition of Securities:			107613000		Issued for L.O.&A.A. bonds
Issued for Refundment of Securities:			23214500		
Issued for Reorganization:			129816500		
assumed in Reorganization			8021000		
" " Augmentation of Securities			7993000		
Issued for Mtge Augmentation & Betterments	1500000	L Treasury	21855500		
TOTAL,	1500000		297850500		

a majority of the Cons. of this company were issued in exchange for securities of former organizations, as set forth in Exhibit B hereto annexed.

RECAPITULATION OF CAPITALIZATION.

ACCOUNT.	TOTAL PAR VALUE OUTSTANDING.	ASSIGNMENT. TO RAILWAYS.	ASSIGNMENT. TO OTHER PROPERTIES.	AMOUNT PER MILE OF LINE. [See Instructions.] MILES.	AMOUNT PER MILE OF LINE. [See Instructions.] AMOUNT.	REMARKS.
Capital Stock—Page 21,	155 000 000	155 000 000		6139 00	25 249	
Funded Debt—Page 27,	190 237 500	190 237 500		6139 00	3 099	
Collateral Trust Bonds	107 613 000	107 613 000				
Equipment Lease Obligations	2 239 [1]	2 239 [1]		6139 00		
TOTAL,	452 852 739 [1]	452 852 739 [1]			56 237	

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1908.	
Cash,	3 790 794 91	Receiver's Certificates,	
Bills Receivable,	191 116 15	Loans and Bills Payable,	
Due from Agents,	830 721 20	Audited Vouchers and Accounts,	4 006 192 57
Due from Solvent Companies and Individuals,	6 149 816 72	Wages and Salaries,	2 869 525 45
Traffic Balances due from other Companies,		Traffic Balances due to other Companies,	91 858 71
Other Cash Assets [Excluding "Materials and Supplies."] [1]		Dividends not Called for,	2 714 955 50
Insurance Funds & Relief Assn. Account	26 514 893 08	Matured Interest Coupons Unpaid [Including Coupons Due July 1].	1 170 825 75
Clearing House Account	3 366 414 50	Rents due July 1, Sales account	1 955 109 41
Ry. Fund & Litchfield Fall	682 190 92	Miscellaneous, Relief Account	9 116 021 23
TOTAL—CASH AND CURRENT ASSETS,	72 635 947 91	TOTAL—CURRENT LIABILITIES,	21 724 196 62
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	50 911 751 29
TOTAL,	72 635 947 91	TOTAL,	72 635 947 91

[1] Materials and Supplies on hand, $ 6 113 388 17

[See General Balance Sheet—Page 83.]

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ADDITIONS AND BETTERMENT EXPENDITURES.

Account	EXPENDITURES DURING YEAR Charged to Capital	Charged to Special Fund	Charged to Income	TOTAL
1- Right of Way & Station Grounds	$ 22 909.71			
2- Real Estate				
3- Widening Cuts and Fills	24 095.01			
4- Protection of Banks	7 957.89			
5- Grade Revisions and Changes of Line	97 935.97			
6- Tunnel Improvements				
7- Bridges, Trestles and Culverts	734 181.85			
8- Increased Weight of Rail & Fastenings	164 741.51			
9- Ballast	67 108.40			
10- Additional Main Tracks				
11- Sidings and Spur Tracks	487 702.49			
12- Terminal Yards	389 721.25			
13- Fencing Right of Way	16 884.06			
14- Improvement of Over & Under Grade Crossings	17 009.91			
15- Track Elevation, Elimination of Grade Crossings, etc				
16- Interlocking Apparatus	4 139.42			
17- Block and other Signal Apparatus	14 143.88			
18- Telegraph and Telephone Lines	41 866.43			
19- Station Buildings and Fixtures	172 177.14			
20- Shops, Enginehouses and Turntables	696 213.48			
21- Shop Machinery and Tools	199 126.48			
22- Water and Fuel Stations	219 276.68			
23- Grain Elevators & Storage Warehouses				
24- Dock and Wharf Property	23 213.41			
25- Electric Light & Power Plants				
26- Electric Power Transmission				
27- Gas-producing Plants				
28- Snow and Sand Fences & Snow Sheds	1 151.37			
29- Miscellaneous Structures	167 946.67			
30- Reconstruction of Road Purchased				
- Additional Expenditures on Branch Roads	5 260.55			
31- Steam Locomotives				
32- Electric Locomotives				
33- Passenger train cars				
34- Freight train cars				
35- Work Equipment				
36- Fleeting Equipment				
37- Interest, Discount and Commission				
TOTAL	$3 534 765.30			$3 534 765.30

EXPENDITURES FOR ROAD

	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR			
	Charged to Capital	Charged to Special Funds or Income	Charged to Capital	Charged to Special Funds or Income.	Total Cost to June 30,1907.	Total Cost to June 30, 1908
I. ROAD:						
1. Engineering	$ 188 172.53		32 173.64			
2- Right of Way & Station Grounds	467 913.29		139 806.46			
3- Real Estate	1 127 469.45					
4- Grading	5 938 888.42		407 208.33			
5- Tunnels	646 935.77		143.95			
6- Bridges, Trestles and Culverts	1 843 463.90		731 449.91			
7- Ties	563 332.47		127 102.06			
8- Rails	725 388.39		422 885.36			
9- Frogs and switches	15 938.63		38 113.01			
10- Track Fastenings & other material	293 954.79		49 291.01			
11- Ballast	260 083.79		44 334.05			
12- Track Laying & Surfacing	346 958.97		158 118.95			
13- Roadway Tools	690.07		274.61			
14- Fencing Right of Way	5 890.23		16 810.99			
15- Crossings and signs	31 112.47		22 131.31			
16- Interlocking & other Signal Apparatus	2 122.21		20 085.12			
17- Telegraph and Telephone Lines	5 309.95		39 598.45			
18- Station Buildings & Fixtures	36 584.90		203 462.84			
19- General Office Buildings & Fixtures			5 766.13			
20- Shops, Enginehouses & Turntables	253 050.52		575 241.81			
21- Shop Machinery and Tools	3 568.18		214 276.26			
22- Water Stations	61 760.39		182 889.86			
23- Fuel Stations	3 271.77		51 028.28			
24- Grain Elevators						
25- Storage Warehouses						
26- Dock & Wharf Property			2 701.37			
27- Electric Light Plants						
28- Electric Power Plants						
29- Electric Power Transmission						
30- Gas producing Plants						
31-Miscellaneous Structures	31 429.13		75 066.00			
32- Transportation of Men & Material	30 802.76					
33- Rent of Equipment	99 464.02					
34- Repairs of Equipment	5 303.33					
35- Earnings & Operating Expenses during Construction	143.09					
36- Cost of Road Purchased	4 975 915.33					
Net Proceeds of Land Department	1 039 809.00					
TOTAL	$16 924 318.35		$5 554 557.04		$318 388 493.45	338 867 868.84

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR.			
	Charged to Capital	Charged to Special Funds or Income.	Charged to Capital	Charged to Special Funds or Income	Total Cost to June 30,1907.	Total cost to June 30, 1908
II. EQUIPMENT:						
37- Steam Locomotives	$1 031 060.38					
38- Electric Locomotives						
39- Passenger train cars	264 772.14					
40- Freight Train cars	1 049 895.30					
41- Work Equipment	500.00					
42- Floating Equipment						
TOTAL	$2 346 227.82				$37 295 670.07	39 641 897.89
III. GENERAL EXPENDITURES:						
43- Law Expenses	.25					
44- Stationery and Printing	669.79					
45- Insurance	141.10		208.46			
46- Taxes	327.11					
47- Interest & Commissions	242 466.43					
48- Other Expenses	28 071.84					
TOTAL	$271 676.52		$208.46			$271 884.98
RECAPITULATION.						
I. ROAD	$16 924 818.35		3 554 557.04		318 388 493.45	338 867 868.84
II EQUIPMENT	2 346 227.82				37 295 670.07	39 641 897.89
III GENERAL EXPENDITURES	271 676.52		208.46			271 884.98
TOTAL	$19 542 722.69		3 554 765.50		$355 684 163.52	$378 781 651.71

Cost of Road per Mile of Line
Cost of Equipment per Mile of Line
General Expenditures per Mile of Line
TOTAL PER MILE OF LINE

Inasmuch as property purchased at foreclosure embraced nearly 31 000 000 acres of land, it would be manifestly misleading to figure cost per mile on amount shown.

INCOME ACCOUNT.

[FOR COMPANIES MAKING OPERATING REPORTS.]

OPERATING INCOME:												
Rail Operations:												
Operating Revenues—Page 45,	68	235	484	17	*	*	*		*	*	*	
Operating Expenses—Page 65,	39	065	033	10	*	*	*		*	*	*	
NET OPERATING REVENUE,	*	*	*		28	330	450	47	*	*	*	
NET OPERATING DEFICIT,	*	*	*						*	*	*	
Outside Operations—Page 67, A:												
Revenues,	1	787	607	96	*	*	*		*	*	*	
Expenses,	1	146	682	10	*	*	*		*	*	*	
NET REVENUE,	*	*	*			640	925	86	*	*	*	
NET DEFICIT,	*	*	*						*	*	*	
TOTAL NET REVENUE,	*	*	*		29	011	376	33	*	*	*	
TOTAL NET DEFICIT,	*	*	*						*	*	*	
Taxes Accrued—Page 121, A,	*	*	*		2	717	485	47	*	*	*	
OPERATING INCOME,	*	*	*		*	*	*		26	293	890	86
OPERATING LOSS,	*	*	*		*	*	*					
OTHER INCOME:												
Rents Accrued from Lease of Road—Page 69,	*	*	*			233	185	47	*	*	*	
Other Rents—Credits:												
(a) Hire of Equipment—Balance—Page 81,		103	491	23	*	*	*		*	*	*	
(b) Joint Facilities—Page 69,		124	231	88	*	*	*		*	*	*	
(c) Miscellaneous Rents—Page 71,		21	702	66	*	*	*		*	*	*	
	*	*	*			510	425	77	*	*	*	
Separately Operated Properties—Profit—Page 75,	*	*	*						*	*	*	
Dividends Declared on Stocks Owned or Controlled—Pages 49 and 57,	*	*	*			7	799	14	*	*	*	
Interest Accrued on Funded Debt Owned or Controlled—Pages 53 and 57,	*	*	*				72	510	*	*	*	
Interest on Other Securities, Loans, and Accounts,	*	*	*		2	178	363	44	*	*	*	
Miscellaneous Income—Page 71,	*	*	*			208	611	16	*	*	*	
TOTAL OTHER INCOME,	*	*	*		*	*	*		8	112	009	40
Gross Corporate Income carried forward,	*	*	*		*	*	*		34	705	900	50
Gross Corporate Loss carried forward,	*	*	*		*	*	*		*			

INCOME ACCOUNT—CONTINUED.

[FOR COMPANIES MAKING OPERATING REPORTS.]

Gross Corporate Income brought forward,	*	*	*		*	*	*		32	705	900	50
Gross Corporate Loss brought forward,	*	*	*		*	*	*					
DEDUCTIONS FROM GROSS CORPORATE INCOME:												
Rents Accrued for Lease of Other Roads—Page 73,	*	*	*			125	151	86	*	*	*	
Other Rents—Debits:												
(a) Hire of Equipment—Balance—Page 81,					*	*	*		*	*	*	
(b) Joint Facilities—Page 73,		175	891	70	*	*	*		*	*	*	
(c) Miscellaneous Rents—Page 75,			17	57	*	*	*		*	*	*	
	*	*	*			139	076	27	*	*	*	
Separately Operated Properties—Loss—Page 75,	*	*	*						*	*	*	
Interest Accrued on Funded Debt—Page 27,	*	*	*		11	403	427	50	*	*	*	
Other Interest,	*	*	*		3	106	882	75	*	*	*	
Sinking Funds Chargeable to Income,	*	*	*						*	*	*	
Other Deductions—Page 75,	*	*	*						*	*	*	
TOTAL DEDUCTIONS FROM GROSS CORPORATE INCOME,	*	*	*		*	*	*		1	611	232	38
NET CORPORATE INCOME,	*	*	*		*	*	*		1	893	061	12
NET CORPORATE LOSS,	*	*	*		*	*	*					
DISPOSITION OF NET CORPORATE INCOME:												
Dividends Declared:												
(a) On Preferred Stock—Page 21:												
per cent payable					*	*	*		*	*	*	
per cent payable					*	*	*		*	*	*	
per cent payable					*	*	*		*	*	*	
per cent payable					*	*	*		*	*	*	
TOTAL,	*	*	*						*	*	*	
(b) On Common Stock—Page 21:												
1 3/4 per cent payable Nov. 1. 1907	2	712	500	-	*	*	*		*	*	*	
1 3/4 per cent payable Feb. 1. 1908	2	712	500	-	*	*	*		*	*	*	
1 3/4 per cent payable May 1. 1908	2	712	500	-	*	*	*		*	*	*	
1 3/4 per cent payable Aug 1. 1908	2	712	500	-	*	*	*		*	*	*	
TOTAL,	*	*	*		10	850	000	00	*	*	*	
(c) On Other Securities—Page 21:												
per cent payable	*	*	*						*	*	*	
									10	850	000	00
Additions and Betterments Charged to Income—Page 33,	*	*	*						*	*	*	
Appropriations to Reserves,	*	*	*		2	784	950	28	*	*	*	
Miscellaneous:									2	784	950	28
					*	*	*		*	*	*	
					*	*	*		*	*	*	
					*	*	*		*	*	*	
	*	*	*						*	*	*	
	*	*	*		*	*	*					
BALANCE FOR YEAR CARRIED FORWARD TO credit OF PROFIT AND LOSS,	*	*	*		*	*	*		6	258	117	84

PROFIT AND LOSS ACCOUNT.

DEBIT.		CREDIT.	
Balance June 30, 1907, Balance for year brought forward from Income Account, Other Properties—Loss—Page 67, B,		Balance June 30, 1907, Balance for year brought forward from Income Account, Other Properties—Profit—Page 67, B,	44 595 707 63 6 258 017 84
Deductions for Year: Balance of Premiums on Bonds purchased & cancelled Interest Paid to O.C.R.R. Co. on advances made by that Company prior to this fiscal year	3 205 00 24 199 34 44	Additions for Year: Unclaimed Wages	5 738 10
Dividends Declared out of Surplus: (a) On Preferred Stock—Page 21 per cent payable per cent payable (b) On Common Stock—Page 21 per cent payable per cent payable (c) On Other Securities—Page 21 per cent payable			
Balance Credit, June 30, 1908, carried to Balance Sheet—Page 85,	50 611 864 53	Balance Debit, June 30, 1908, carried to Balance Sheet—Page 83,	
	50 859 562 97		50 859 562 97

Operating revenues from business originating and terminating in the State of Minnesota. see note 1. page 44.

OPERATING REVENUES—STATE OF MINNESOTA

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			26571722.25
2. Passenger Revenue,			1060319.97
3. Excess Baggage Revenue,			18794.21
4. Parlor and Chair Car Revenue,			—
5. Mail Revenue,			215281.77
6. Express Revenue,			77806.22
7. Milk Revenue (on Passenger Trains),			—
8. Other Passenger-Train Revenue,			5376.02
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			1372578.15
9. Switching Revenue,	(No entries required in this column for 1908.)	(No entries required in this column for 1908.)	2137771.21
10. Special Service Train Revenue,			15441.68
11. Miscellaneous Transportation Revenue,			124187.25
TOTAL REVENUE FROM TRANSPORTATION,			41259553.54
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			76.32
13. Parcel-Room Receipts,			—
14. Storage—Freight,			50657.91
15. Storage—Baggage,			10601.51
16. Car Service,			203041.27
17. Telegraph Service,			29790.35
18. Rents of Buildings and Other Property,			38055.93
19. Miscellaneous,			21575.39
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			697108.68
TOTAL OPERATING REVENUES—STATE,			41346662.22
TOTAL OPERATING REVENUES—ENTIRE LINE,			68295484.17

Operating revenues from Interstate business accruing to the State of Minnesota divided on straight mileage basis, see note 2, page 44.

OPERATING REVENUES.
STATE OF MINNESOTA.

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			6451,905.08
2. Passenger Revenue,			1095,548.54
3. Excess Baggage Revenue,			24,629.76
4. Parlor and Chair Car Revenue,			—
5. Mail Revenue,			—
6. Express Revenue,			203,476.70
7. Milk Revenue (on Passenger Trains),			—
8. Other Passenger Train Revenue,			131.50
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			2123,786.50
9. Switching Revenue,			7461.90
10. Special Service Train Revenue,			3931.17
11. Miscellaneous Transportation Revenue,			
TOTAL REVENUE FROM TRANSPORTATION,			8989,304.65
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			
13. Parcel-Room Receipts,			
14. Storage—Freight,			
15. Storage—Baggage,			
16. Car Service,			
17. Telegraph Service,			
18. Rents of Buildings and Other Property,			
19. Miscellaneous,			
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			
TOTAL OPERATING REVENUES,			8989,304.65
TOTAL OPERATING REVENUES, Pages 45 and 45a.			13996,467.71

RAILWAY STOCKS OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF STOCKS OWNED NOT HELD IN SINKING OR OTHER FUNDS.		RATE.	DIVIDENDS DECLARED.	VALUATION.
	UNPLEDGED.	PLEDGED.			
Stocks of Respondent Corporation:					
Stocks of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Washington Central Ry Co	1000000 00				221279 94
Chicago Great Western Ry	2127200 00				2127200 00
Lake Superior Term & Ter Ry Co	718000				32001 00
St Paul Union Depot Co	59850 00	43750 00	4%	2144 00	59850 00
Duluth Union Depot & Ter Co		300000 00	5%	15000 00	–
Minnesota Ter Ry Co		9000 00			–
Stocks of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
Minnesota & International Ry Co		3500000 00	7½%	262500 00	–
Missouri River Ry Co	1000000				1000000
Western Dakota Ry Co	1000000				1000000
Chicago Aur & Quincy R R Co		53806500 00	8%	4304520 00	109111430976
TOTAL,	3278850 00	54507250 00		4349914 00	111574164870

II - Inactive Corporations

Name of Security		Total par value of Stock outstanding	Par value of stocks owned Unpledged	Pledged	Valuation of Stocks owned
Clealum Railroad	Common Stock	$ 300 000.00		$ 300 000.00	
Duluth & Manitoba Railway		2 000 000.00		2 000 000.00	
Duluth Crookston & Nort ern RR		5 000 000.00		5 000 000.00	
Jamestown & Northern Extension RR		1 600 000.00		1 600 000.00	
Spokane Falls & Idaho Railroad		500 000.00		500 000.00	
Helena & Red Mountain Railroad		400 000.00		380 000.00	
Spokane & Palouse Ry (Idaho Division)		1 000 000.00		1 000 000.00	
James River Valley Railroad		1 000 000.00		1 000 000.00	
Coeur d'Alene Ry & Navigation Co		1 000 000.00	1 000 000.00		
Central Washington Railroad		1 500 000.00	1 500 000.00		
Northern Pacific & Montana RR		5 306 100.00		5 306 100.00	
Little Falls & Dakota Railroad		1 463 357.50		1 463 257.50	
Northern Pac.Fergus Falls & Black Hills RR		15 000 000.00		15 000 000.00	
Fargo & Southwestern Railway		4 000 000.00		4 000 000.00	
Northern Pacific & Puget Sound RR		375 000.00		375 000.00	
Southeastern Dakota Railway		133 500.00		133 500.00	
Northern Pac LaMoure & Missouri Riv RR		318.000.00		318 000.00	
Northern Pacific & Cascade RR		225 000.00		225 000.00	
Northern Pacific & Manitoba Ry (The Manitoba Ry)		1 423 300.00		1 425 300.00	
Jamestown & Northern Railroad		3 200 000.00		3 200.000.00	
Green River & Northern Railroad		424 000.00		424 000.00	
Tacoma Orting & Southeastern Ry		172 000.00		172 000.00	
Rocky Fork & Cooke City R R		2 000 000.00		2 000 000.00	
United Railroads of Washington		4 961 000.00		4 961 000.00	
Sanborn Cooperstown & Turtle Mtn RR		300 000.00		300 000.00	
Rocky Mountain Railroad of Montana		1 000 000.00		1 000.000.00	
Helena & Jefferson County R R		402 000.00		402 000.00	
St Paul & Northern Pacific Railway		7 000 000.00		7 000.000.00	
Seattle & International Railway		2 400 000.00		2 400 000.00	
Montana Union and Montana Railway		1 450 000.00		1 450 000.00	
St Paul & Duluth Railroad	Com Stk & Scrip	4 662 345.15	149.07	4 659 862.07	
Still Water Union Depot & Transfer Co	Common Stock	175 000.00		175 000.00	
Monte Cristo Railway		1 200 000.00		1 200 000.00	
Bellingham Bay & Eastern Railway		250 000.00		250 000.00	
Washington Railway & Nav Co Line		450 000.00		450 000.00	
Seattle & San Francisco & Ry Nav Co Lines		3 432 700.00	3 423 700.00		
Washington & Columbia River Railway		3 000 000.00	3 000 000.00		
Drummond & Philipsburg Railroad		500 000.00	700.00	499 300.00	
Helena Boulder Valley & Butte R R		600 000.00	600.00	599 400.00	
Helena & Northern Railroad		500 000.00	600.00	499 400.00	
Missouri & Bitter Root Valley R R		1 000 000.00	700.00	999 300.00	
Puget Sound Shore Railroad		500 000.00	500 000.00		
Gaylord & Ruby Valley Railway		225 000.00		225 000.00	
Spokane & Seattle Railway		600 000.00		600 000.00	
Little Falls & Southern Railway		50 000.00		50 000.00	
Stillwater & St Paul Railroad		400 000.00		399 500.00	
Duluth Short Line Railway		600 000.00		600 000.00	
Grantsburg Rush City & St Cloud R R		8 050.00		7 900.00	
St Cloud Grantsburg & Ashland R R		39 310.00		25 460.00	
Taylors Falls & Lake Superior R R		405 000.00		405 000.00	
Lake Superior & Mississippi R R		99 600.00		1 200.00	
Seattle Lake Shore & Eastern R R		4 150 050.00	3 162 650.00		
Portland Vancouver and Yakima Railway		300 000.00	300 000.00		
Washington & Oregon Railway		250 000.00	250 000.00		
T O T A L		$88 030 112.65	13 038 699.07	74 879 379.57	

Pledged stocks deposited with Trustees of Mortgages - no value

Unpledged stocks in hands of Assistant Treasurer - no valuation except as shown.

RAILWAY FUNDED DEBT OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF FUNDED DEBT OWNED NOT HELD IN SINKING OR OTHER FUNDS. UNPLEDGED.	PLEDGED.	RATE.	INTEREST ACCRUED.	VALUATION.
Funded Debt of Respondent Corporation:					
Prior Lien Mtge Bonds	1552000000				1553471544
General " "	933000000				733398111
St Paul-Duluth Div "	361000000				361000000
Funded Debt of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Washington Central Ry Co Bonds	31500000		4%	1260000	29137500
Funded Debt of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
Minneapolis International Ry Co. Bonds		21145000 00	5%	1072500 0	
Nor Pac - Gr. Jt & P & Q Collateral	2154000000		4%	726600	211929412
TOTAL,	5365000000	21145000000		19251000	5059238877

II Inactive Corporations

	Name of Security	Total par value of Funded Debt outstanding	Par value of funded debt owned Unpledged	Par value of funded debt owned Pledged	Valuation of funded debt owned
Clealum Railroad	First Mtge Bonds	$ 68 000.00		$ 68 000.00	
Duluth & Manitoba Railway		3 101 000.00		3 101 000.00	
Duluth Crookston & Northern Ry		889 000.00		889 000.00	
Jamestown & Northern Extension R R		270 000.00		270 000.00	
Spokane Falls & Idaho R R		270 000.00		270 000.00	
Helena & Red Mountain R R		400 000.00		387 000.00	
Spokane & Palouse Railway		2 984 000.00		2 981 000.00	
James River Valley Railroad		963 000.00		962 000.00	
Coeur d'Alene Ry & Nav Co		1 238 000.00	1 237 000.00		
Central Washington Railway		2 180 000.00	2 180 000.00		
Northern Pacific & Montana R R		8 843 000.00		8 778 000.00	
Little Falls & Dakota R R		1 577 429.00		1 577 429.00	
Northern Pac Fergus & Black Hills R R		2 102 701.00		2 102 701.00	
Fargo & Southwestern Railway		1 569 398.00		1 569 398.00	
Northern Pac & Puget Sound Shore RR		1 383 000.00		1 383 000.00	
Southeastern Dakota Railway		133 000.00		133 000.00	
Nor Pac LaMoure & Missouri River RR		318 000.00		318 000.00	
Northern Pacific & Cascade R R		388 000.00		388 000.00	
Nor Pac & Manitoba Ry (The Manitoba Ry)		5 576 800.00		5 576 800.00	
Jamestown & Northern Railroad		1 843 916.00		1 843 916.00	
Green River & Northern Railroad		375 000.00		375 000.00	
United Railroads of Washington		5 298 000.00		5 298 000.00	
Sanborn Cooperstown & Turtle Mtn RR		665 750.00		665 750.00	
Rocky Mountain R R of Montana		942 941.00		942 941.00	
Helena & Jefferson County R R		366 599.00		366 599.00	
Seattle & International Railway		4 450 000.00		4 450 000.00	
Minneapolis & Duluth Railroad		280 000.00	280 000.00		
Bellingham Bay & Eastern Ry		500 000.00		500 000.00	
Seattle & San Francisco Ry & Nav Co Lines		1 331 000.00	1 331 000.00		
Washington & Columbia River Railway	Income Bonds	2 245 000.00	2 245 000.00		
Spokane & Seattle Railway	First Mtge Bonds	1 112 000.00		1 112 000.00	
Seattle Lake Shore & Eastern Ry		5 675 000.00	5 670 000.00		
Stillwater & St Paul Railroad		196 500.00		196 500.00	
Total		$59 436 034.00	12 843 000.00	46 505 034.00	

No valuation - Pledged bonds deposited with Trustee of Mortgages
Unpledged bonds in hands of Assistant Treasurer.

MISCELLANEOUS STOCKS AND FUNDED DEBT OWNED.

A. OTHER THAN RAILWAY STOCKS.

NAME.	TOTAL PAR VALUE OF SECURITIES OWNED.	RATE.	DIVIDENDS DECLARED.	VALUATION.
Northwestern Improvement Co.	2775000 00			2775000 00
Northern Pacific Express Co	343000 00		400000 00	Pledged
TOTAL,	3118000 00		400000 00	2775000 00

B. OTHER THAN RAILWAY FUNDED DEBT.

NAME.	TOTAL PAR VALUE OF SECURITIES OWNED.	RATE.	INTEREST ACCRUED.	VALUATION.
Northwestern Improvement Co	7000000 00	4%	280000 00	7000000 00
TOTAL,				

SINKING, INSURANCE, AND OTHER FUNDS.

A. INCOME AND DISBURSEMENTS DURING YEAR.

NAME OF FUND.	INCOME.			DISBURSEMENTS.
	CASH APPROPRIATIONS TO FUND.	INCOME TO FUND FROM INVESTMENTS.	OTHER INCOME TO FUND.	TOTAL.	
Insurance Funds	2780950 28	70396 25	187522 17	3062869 70	194231 18
TOTAL,					

B. ASSETS ON JUNE 30, 1908.

NAME OF FUND.	SECURITIES IN FUND.			CASH IN FUND	TOTAL.
	NAME.	PAR VALUE.	COST.		
Insurance Funds Assets	N.O.Ry & Gulf Coast Line Bonds	95000 -	95017 33		
	N.O.Ry & Miss. Riv. Bridge Bonds	1068500 -	678615 70		
	N.O.Ry & Miss. Riv. Bridge Bonds	10000 -	10000 67		
	Texas Central Ry Co	6000 -	5400 00		
	N.O. Gas Joint Bonds	1300000 -	1295797 69		
		2482500 -	2084785 39		2084785 39
	N.O.Ry & Common Stock	70000 -	57937 50		
	Liberty to Mississippi Bridge N.O.Ry Co	18000 -	13500 00		
		88000 -	71437 50		71437 50
				2813777 11	2813777 11
TOTAL,		2570500 -	2156222 89	2813777 11	5000000 00

OPERATING EXPENSES—ENTIRE LINE.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (Per Cent.)	RATIO TO TOTAL OPERATING EXPENSES. (Per Cent.)
I. MAINTENANCE OF WAY AND STRUCTURES:			
Superintendence,	$ 371 242 67	4 13	73
Ballast,	28 501 91	32	07
Ties,	1380 436 53	15 36	3 46
Rails,	234 066 78	3 05	67
Other Track Material,	44 9 310 40	5 00	1 13
Roadway and Track,	4189 564 44	46 63	10 51
Removal of Snow, Sand, and Ice,	77 622 19	86	17
Tunnels,	20 123 56	22	05
Bridges, Trestles, and Culverts,	758 766 98	8 45	1 70
Over and Under Grade Crossings,	6 264 62	07	02
Grade Crossings, Fences, Cattle Guards, and Signs,	117 582 55	1 31	27
Snow and Sand Fences and Snow Sheds,	23 955 96	27	06
Signals and Interlocking Plants,	23 074 24	26	06
Telegraph and Telephone Lines,	78 132 21	87	18
Electric Power Transmission,			
Buildings, Fixtures, and Grounds,	813 038 87	9 05	2 04
Docks and Wharves,	100 085 01	1 11	25
Roadway Tools and Supplies,	71 718 15	80	18
Work Equipment—Repairs,	138 444 16	1 54	35
Work Equipment—Renewals,	7 221 97	01	—
Work Equipment—Depreciation,	46 679 06	51	12
Injuries to Persons,	40 304 08	45	10
Stationery and Printing,	8 300 18	09	02
Insurance,	37 510 16	42	09
Other Expenses,	2 296 78	03	01
Total of Foregoing Accounts,	9057 351 71	100 81	22 72
Maintaining Joint Tracks, Yards, and Other Facilities—Dr.,	82 791 90	92	21
Maintaining Joint Tracks, Yards, and Other Facilities—Cr.,	155 787 35	1 73	39
TOTAL—MAINTENANCE OF WAY AND STRUCTURES,	$ 8984 355 86	100 00	22 54
II. MAINTENANCE OF EQUIPMENT:			
Superintendence,	178 270 91	2 12	44
Steam Locomotives—Repairs,	2336 466 46	27 69	5 86
Steam Locomotives—Renewals,			
Steam Locomotives—Depreciation,	852 784 76	10 11	2 14
Electric Locomotives—Repairs,			
Electric Locomotives—Renewals,			
Electric Locomotives—Depreciation,			
Passenger-Train Cars—Repair	490 576 99	5 81	1 23
Passenger-Train Cars—Renewals,	4 664 75	06	01
Passenger-Train Cars—Depreciation,	312 075 25	3 70	78
Freight-Train Cars—Repairs,	2319 235 82	27 49	5 82
Freight-Train Cars—Renewals,	64 528 77	77	16
Freight-Train Cars—Depreciation,	1554 938 13	18 43	3 90
Electric Equipment of Cars—Repairs,			
Electric Equipment of Cars—Renewals,			
Electric Equipment of Cars—Depreciation,			
Floating Equipment—Repairs,	36 420	05	01
Floating Equipment—Renewals,			
Floating Equipment—Depreciation,	7 816 56	09	02
Shop Machinery and Tools,	119 155 82	1 41	30
Power Plant Equipment,			
M. E. Expenses carried forward,	$ 2344 825 72	27 61	5 66

OPERATING EXPENSES—ENTIRE LINE—CONTINUED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
II. MAINTENANCE OF EQUIPMENT—Continued:			
Brought forward,	$ 23,482,572	97.61	20.41
Injuries to Persons,	20,769,56	.24	.05
Stationery and Printing,	853,644	.10	.02
Insurance,	842,593,48	1.00	.21
Other Expenses,	1,102,218,96	1.31	.28
Total of Foregoing Accounts,	$ 48,948,116	100.26	21.22
Maintaining Joint Equipment at Terminals—Dr.,	23,536,34	.28	.06
Equipment Borrowed—Dr.,	289,249,53	3.40	.72
Maintaining Joint Equipment at Terminals—Cr.,	10,824,43	.12	.03
Equipment Loaned—Cr.,	322,138,71	3.82	.81
TOTAL—MAINTENANCE OF EQUIPMENT,	$ 48,766,89	100.00	21.16
III. TRAFFIC EXPENSES:			
Superintendence,	1,842,077,33	22.77	.46
Outside Agencies,	383,668,38	4.74	.96
Advertising,	138,675,05	1.71	.35
Traffic Associations,	18,278,25	.26	.05
Fast Freight Lines,			
Industrial and Immigration Bureaus,	33,982,39	.42	.09
Stationery and Printing,	486,05,05	6.01	.12
Insurance,	60,756	.01	—
Other Expenses,	5,553,55	.07	—
TOTAL—TRAFFIC EXPENSES,	$ 8,087,56	100.00	2.03
IV. TRANSPORTATION EXPENSES:			
Superintendence,	3,182,266,99	1.54	.80
Dispatching Trains,	481,138,09	2.32	1.21
Station Employees,	26,766,661,37	12.90	6.71
Weighing and Car-Service Associations,	44,986,19	.22	.11
Stockyards and Grain Elevators,			
Coal and Ore Docks,			
Station Supplies and Expenses,	1,642,593,51	.79	.41
Yardmasters and their Clerks,	1,971,138,18	.95	.49
Yard Conductors and Brakemen,	8,704,846,31	4.20	2.19
Yard Switch and Signal Tenders,	564,577,68	.27	.14
Yard Supplies and Expenses,	108,967,72	.09	.05
Yard Enginemen,	4,553,411,57	2.19	1.14
Enginehouse Expenses—Yard,	1,797,797,99	.87	.45
Fuel for Yard Locomotives,	7,097,604,54	3.42	1.78
Water for Yard Locomotives,	233,328,64	.11	.06
Lubricants for Yard Locomotives,	113,583,31	.05	.03
Other Supplies for Yard Locomotives,	12,619,21	.06	.03
Total of Last Fifteen Accounts,	$ 41,985,859,22	26.12	13.59
Operating Joint Yards and Terminals—Dr.,	321,761,12	1.55	.81
Operating Joint Yards and Terminals—Cr.,	235,430,34	1.13	.59
Total Station and Yard Expenses,	$ 55,619,010	26.54	13.82
Motormen,			
Road Enginemen,	2,403,054,64	11.58	6.03
Enginehouse Expenses—Road,	693,846,61	3.35	1.74
Fuel for Road Locomotives,	5,166,031,86	24.91	12.96
Water for Road Locomotives,	228,891,59	1.10	.57
Lubricants for Road Locomotives,	92,788,16	.45	.23
Other Supplies for Road Locomotives,	83,615,73	.40	.21
Transportation Expenses carried forward,	$ 668,228,59	3.79	2.74

All operating expenses in Minnesota to be charged on the basis of Train Milage.

The figures shown on page 6 for operating Expenses in Minnesota represent Minnesota's proportion of Expenditures not allocated to the state on the various basis uniformly applied by the company over the entire road Until such time as the various states in which the Northern Pacific performs a transportation business adopt a uniform plan we do not feel that your request for a division of the entire operating expense on a train milage basis should be applied

OPERATING EXPENSES—ENTIRE LINE—CONCLUDED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
IV. TRANSPORTATION EXPENSES—Continued:			
Brought forward,	8 668 220 59	41 79	21 94
Operating Power Plants,			
Purchased Power,			
Road Trainmen,	2 363 079 40	11 39	5 92
Train Supplies and Expenses,	956 177 00	4 61	2 40
Interlockers, Block and Other Signals—Operation,	30 146 22	15	08
Crossing Flagmen and Gatemen,	53 692 27	26	13
Drawbridge Operation,	22 820 70	11	06
Clearing Wrecks,	152 960 49	74	38
Telegraph and Telephone—Operation,	132 937 67	64	33
Operating Floating Equipment,	41 879 43	20	11
Express Service,			
Stationery and Printing,	99 416 10	48	25
Insurance,	42 795 92	21	11
Other Expenses,	22 812 08	11	06
Loss and Damage—Freight,	869 519 08	4 19	2 18
Loss and Damage—Baggage,	18 475 87	09	05
Damage to Property,	176 924 60	85	44
Damage to Stock on Right of Way,	10 629 54	51	27
Injuries to Persons,	71 751 24	3 47	1 80
Total of Last Twenty-six Accounts,	11 426 592 77	69 29	36 21
Operating Joint Tracks—Dr.,	2 291 54	01	—
Operating Joint Tracks—Cr.,	41 290 37	20	10
Total Movement Expenses,	14 417 534 94	69 60	36 21
TOTAL—TRANSPORTATION EXPENSES,	20 743 429 22	100 00	52 03
V. GENERAL EXPENSES:			
Salaries and Expenses of General Officers,	147 691 30	16 76	37
Salaries and Expenses of Clerks and Attendants,	400 191 06	44 86	1 00
General Office Supplies and Expenses,	27 751 53	3 11	07
Law Expenses,	166 199 53	18 63	42
Insurance,	6996	01	—
Relief Department Expenses,			
Pensions,			
Stationery and Printing,	43 030 45	4 83	11
Other Expenses,	98 599 64	11 05	25
Total of Foregoing Accounts,	883 533 47	99 05	2 23
General Administration Joint Tracks, Yards, and Terminals—Dr.,	8 555 45	96	02
General Administration Joint Tracks, Yards, and Terminals—Cr.,	55 15	01	—
TOTAL—GENERAL EXPENSES,	892 033 77	100 00	2 25
RECAPITULATION OF EXPENSES:			
I. Maintenance of Way and Structures,	8 984 355 16		22 54
II. Maintenance of Equipment,	8 436 764 89		21 16
III. Traffic Expenses,	808 447 56		2 03
IV. Transportation Expenses,	20 743 429 22		52 03
V. General Expenses,	892 033 77		2 24
TOTAL OPERATING EXPENSES,	39 865 033 30		100 00
Ratio of Operating Expenses to Operating Revenues, 52.42 per cent.*			
OPERATING EXPENSES—STATE OF			
I. Maintenance of Way and Structures,	1 449 693 00		18 94
II. Maintenance of Equipment,	1 668 013 94		21 80
III. Traffic Expenses,	159 329 28		2 08
IV. Transportation Expenses,	4 207 640 55		54 96
V. General Expenses,	170 678 49		2 22
TOTAL OPERATING EXPENSES,	7 655 350 20		100 00
Ratio of Operating Expenses to Operating Revenues, 52.40 per cent.*			

* Two (o) decimal figures required.

SUMMARY OF REVENUES AND EXPENSES OF OUTSIDE OPERATIONS AND OTHER PROPERTIES.

A. OUTSIDE OPERATIONS.

DESIGNATION.	REVENUES.	EXPENSES.	NET REVENUE OR DEFICIT.
1. Boat Lines,			
2. Ferry Lines,			
3. Harbor Terminal Transfers,			
4. Electric Railways,			
5. Express Lines,			
6. Cab and Omnibus Service,			
7. Sleeping-Car Service,	634 928 18	217 662 00	417 266 18
8. Parlor and Chair Car Service,	82 041 05	600 00	83 441 05
9. Dining and Special Car Service,	641 118 77	586 282 03	54 836 74
10. Electric Light and Power Plants,			
11. Gas-Producing Plants,			
12. Canals,			
13. Grain Elevators,			
14. Stock Yards,			
15. Commercial Telegraph and Telephone Lines,			
16. Hotels and Restaurants,	427 489 96	342 138 07	85 351 89
17. Amusement Parks and Resorts,			
18. Coal Storage Plants,			
19. Cold-Storage Plants,			
20. Commercial Ice-Supply Plants,			
21. Public Toll-Bridge Service,			
Miscellaneous:			
TOTAL,	1787 607 96	1146 682 10	640 925 86

JOINT TRACKS - Tracks	Dugdale to Red Lake Falls, Minn	Great Northern Ry Co	$ 3 091.69
	St Paul to Minneapolis	Mpls & St Louis RR	44 167.09
	" "	Mpls St P & S Ste M Ry	29 299.60
	" "	Wis Cent (St P & St C F)	14 143 56
	" "	Chgo Great Westn Ry	42 487.84
	Fargo to Casselton	Great Northern Ry	3 016.24
	Huntley to Billings	Chgo Bur & Quincy RR	16 677.28
	Silverbow to Meaderville	Oregon S Line Ry	21 723.29
	Lowell to Snohomish	Everett Ry & Elec Co	3 300.00
	Goble to Portland	Ast & Columbia Riv RR	26 463.96
			$204 370.55
JOINT YARDS & TERMLS.	Superior, Duluth, Stillwater &c	Chgo St P M & O Ry Co	2 582.06
	Superior	Lake Sup T & Trf Ry Co	11 151.54
	Superior and Duluth	Dul S Shore & Atl Ry	5 615.61
	Superior	Great Northern Ry	12 838.72
	Duluth, Carlton & Cloquet	"	10 008.29
	Butte	"	240.00
	Spokane - Seattle Divn	"	4 993.93
	Minneapolis	Chgo Grt Western Ry	1 964.04
	Stillwater	Chgo Mil & St P Ry	480.00
	Duluth	Dul & Iron Range RR	25 489.98
	"	Dul Mis & Nor Ry Co	13 484.38
	St Paul	Mpls & St Louis RR Co	11 580.02
	St Paul and Minneapolis	Mpls St P & S Ste M Ry	36 909.62
	Brainerd	Minn & Internatl Ry	960.00
	Minneapolis	Wis Central Ry Co	3 186.03
	Billings and Huntley	Chgo Bur & Quincy RR	3 311.70
	Butte and Helena	Montana Cent Ry Co	4 543.71
	Portland	Nor Pac Terminal Co	9 616.81
	"	Ast & Col River RR	45 186.29
	Minnesota Transfer	Minn. Transf Ry Co	8 236.05
	Seattle	Seattle Pass Station	7 477.55
			$219 861.33

RENTS RECEIVABLE.

1. FROM LEASE OF ROAD.

[For companies making operating reports.]

PROPERTY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
Railway & appurtenances	In Manitoba	Provincial Government		210 000 00
" "	Grant - Anaconda, Mont.	Otta Anaconda & Pac. Ry Co		23 185 47
TOTAL,				233 185 47

2. FROM JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
JOINT TRACKS:	See page 68			200 370 55
JOINT YARDS AND TERMINALS:	See page 68			219 816 33
TOTAL,				420 231 81

RENTS RECEIVABLE—CONTINUED.

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
St Louis River Bridges	Pt Wilson, Minn & Superior, Wis	D.L.&W. R.R. Co. Agt Great Northern Ry Co	8696 14 13006 52	21702 66
TOTAL,				

MISCELLANEOUS INCOME.

SOURCE OF INCOME.		GROSS INCOME.	EXPENSES.	NET MISCELLANEOUS INCOME.
Rent of Iron Mineral		41145 19		41145 19
Dis Ele Prop. of Operation of Minnesota & Duluth Land		4976	2142 26	907 50
Receipts from operating Rpt Land Sales		450 05		450 05
Miscellaneous Receipts		877 17		877 17
Rent of Docks, Dep & other Property	✓	209771 81	60791 02	148980 79
Taxes collected from Lessees of Misc Property		53050 96		53050 96
TOTAL,		271544 94	62933 28	208611 66

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JOINT YARDS & TERMINALS:

Location	Name of Lessor	Amount
Superior, Wis	Lake Sup.Terml & T Ry Co	$ 1 185.92
Ashland, "	Chgo & Northwestern Ry Co	54.21
Ashland "	Wisconsin Central Ry Co.	236.70
Minneapolis, Superior and Duluth	Chgo St P Mpls & O Ry Co	300.71
St Anthony Park	Chgo Great Western Ry Co	164.34
St Paul	Chgo,Burl & Q R R Co	6 136.44
Carlton, Scanlon and Minneapolis	Great Nor. Railway Co	268.86
Duluth	Duluth Union Depot Co	7 485.44
St Paul	St Paul Union Depot Co	4 985.04
Minnesota Transfer	Minn.Transfer Ry Co	8 317.77
Adrian,Wash.	Great Nor Railway Co	1 068.28
Seattle "	Pacific Coast Company	60.00
Seattle "	Oregon & Wash R R Co	120.00
Wallula "	Oregon Railroad & Nav Co	17.50
Portland,Ore	Northern Pac Terml Co	88 454.16
Harrison, Idaho	Oregon Railroad & Nav Co	203.75
		119 079.12

RENTS PAYABLE.

1. FOR LEASE OF ROAD.

NAME OF LESSOR.	LOCATION OF PROPERTY.	GUARANTEED INTEREST ON BONDS.	GUARANTEED DIVIDENDS ON STOCK.	CASH.	TOTAL.
Washington Central Ry Co	Ephrata - Adrian, Wash	74120 00			74120 00
Oregon Short Line Ry Co	Garrison, Butte, Mont			51331 86	51331 86
TOTAL,		74120 00		51331 86	125451 86

2. FOR JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
JOINT TRACKS:	St Paul - Minneapolis	Great Northern Ry Co	24012 58	
	Northtown Jct - St Cloud, Minn	"	20597 96	
	Minneapolis	Minn & St Louis R R Co	1679 47	
	Helena - Rogers, Mont	Montana Central Ry Co	32257	
JOINT YARDS AND TERMINALS:				56812 58
	See page 72			
TOTAL,				119029 02
				175481 20

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	ASSETS.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	318 388 493 45	Cost of Road—Page 35,		338 867 868 90	20 479 375 39	
	37 395 670 07	Cost of Equipment—Page 37,		39 641 897 89	2 346 227 82	
		General Expenditures—37,		271 824 98	271 824 98	
	5 214 930 94	Stocks Owned—Pages 49, 51, and 57,		5 235 330 94	20 400 00	
	11 238 825 02	Funded Debt Owned—Pages 53, 55, and 57,		12 059 238 77	820 413 75	
		Other Permanent Investments,				
		Lands Owned,				
	2 876 275 48	Loans & Bills current Assets		2 365 196 96		511 078 52
	38 809 184 05	Cash and Current Assets—Page 29.		72 635 949 91	34 826 765 53	
		OTHER ASSETS:				
		Equipment Trusts,				
	5 889 981 12	Materials and Supplies—Page 29,		6 113 388 17	223 407 05	
	2 120 460 20	Sinking, Insurance, and Other Funds—Page 59,		5 000 000 00	2 879 539 80	
		Sundries,				
	30 453 06	Interest & Supplies Leases		30 453 06		
	161 833 906	Cost of Lines of Trucks of Mortgage Lands in hands of Trustees		98 405 536		63 427 370
	14 05 773 39	Bonds Debt & Liens Collateral Lands in hands of Trustees		13 53 847 33		52 926 56
	109 114 309 76	Profit and Loss as follows		109 114 309 76		
		Profit and Loss—Page 43,				
	533 503 666 13	GRAND TOTAL,		593 672 421 97	60 169 755 84	

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COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	LIABILITIES.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	155 000 000 00	Capital Stock—Page 21,		155 000 000 00		
	14 721 100 97	Subscriptions to the Capital Stock		62 881 835 97	48 160 735 00	
	186 703 876 00	Funded Debt—Page 27,		190 239 739 32	3 536 863 32	
	23 141 492 00	Current Liabilities—Page 29,		21 724 196 62		1 417 295 38
	542 001 66	Accrued Interest on Funded Debt not yet payable,		536 786 66		5 215 00
	107 613 000 00	R. B. & Jun. Bonds		107 613 000 00		
	65 498 87	Lyncaster Account		65 498 87		
	21 204 620 20	Insurance Fund Account		5 000 000 00	2 979 539 80	
	42 595 707 03	Profit and Loss—Page 43,		50 615 564 53	6 015 657 50	
	533 502 606 13	GRAND TOTAL,		593 672 42 197	60 169 785 82	

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES.				
		DOLLARS.			CTS.	MILLS.
PASSENGER TRAFFIC:						
1. Number of Passengers Carried Earning Revenue,	788.333					
2. Number of Passengers Carried One Mile,	394 351 948					
3. Number of Passengers Carried One Mile per Mile of Road,	141 009					
4. Average Distance Carried,* miles,	100.00					
5. Total Passenger Revenue—Page 45,		18	193	238	52	
6. Average Amount Received from each Passenger,†				2	30	1 48
7. Average Receipts per Passenger per Mile,†					02	2 93
8. Total Passenger Service Train Revenue—Page 45,		20	665	585	16	
9. Passenger Service Train Revenue per Mile of Road,*			3	669	45	
10. Passenger Service Train Revenue per Train-Mile,†				2	04	4 45
FREIGHT TRAFFIC:						
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	15 836 823					
12. Number of Tons Carried One Mile,	6 156 378 947					
13. Number of Tons Carried One Mile per Mile of Road,	1 101 334					
14. Average Distance Haul of One Ton,* miles,	388.59					
15. Total Freight Revenue—Page 45,		46	423	836	55	
16. Average Amount Received for each Ton of Freight,†				2	93	1 89
17. Average Receipts per Ton per Mile,†					00	90
18. Freight Revenue per Mile of Road,*			8	240	92	
19. Freight Revenue per Train-Mile,†				3	07	9 17
TOTAL TRAFFIC:						
20. Operating Revenues—Page 45,		68	234	484	17	
21. Operating Revenues per Mile of Road,*			12	112	76	
22. Operating Revenues per Train-Mile,†				5	24	2 75
23. Operating Expenses—Page 65 (or 65A),		39	565	033	30	
24. Operating Expenses per Mile of Road,*			7	076	64	
25. Operating Expenses per Train-Mile,†				1	09	4 64
26. Net Operating Revenue (or Deficit)—Page 39,		28	374	450	87	
27. Net Operating Revenue (or Deficit) per Mile of Road,*			5	036	18	
28. Average Number of Passengers per Car-Mile,	13					
29. Average Number of Passengers per Train-Mile,	80					
30. Average Number of Passenger Cars per Train-Mile,*	6.15					
31. Average Number of Tons of Freight per Loaded Car-Mile,*	18.56					
32. Average Number of Tons of Freight per Train-Mile,*	130.07					
33. Average Number of Freight Cars per Train-Mile,*	29.21					
34. Average Number of Loaded Cars per Train-Mile,*	22.04					
35. Average Number of Empty Cars per Train-Mile,*	5.48					
36. Average Mileage Operated During Year,*	563.33					

*Two (2) decimal figures required. †Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE—CONTINUED.

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	13,202,682	
38. Passenger Locomotive-Miles	9,570,037	
39. Mixed Locomotive-Miles,	859,247	
40. Special Locomotive-Miles,	11,697	
41. Switching Locomotive-Miles,	4,631,118	
42. TOTAL IN REVENUE SERVICE,		28,272,776
43. Nonrevenue Service Locomotive-Miles,		4,000,000
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	273,508,911	
45. Empty,	64,938,992	
46. Caboose,	11,205,521	
47. TOTAL,		349,653,424
Passenger Car-Miles—		
48. Passenger,	34,165,816	
49. Sleeping, Parlor, and Observation,	15,650,096	
50. Other Passenger-Train Cars,	21,163,855	
51. TOTAL,		60,979,767
Special Car-Miles—		
52. Freight—loaded,	66,406	
53. Freight—empty,	31,435	
54. Caboose,	5,157	
55. Passenger,	30,752	
56. Sleeping, Parlor, and Observation,	15,195	
57. Other Passenger-Train Cars,	6,906	
58. TOTAL,		157,860
59. TOTAL IN REVENUE SERVICE,		410,651,951
60. Nonrevenue Service Car-Miles		48,577,269
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	11,115,133	
62. Passenger Train-Miles,	9,061,820	
63. Mixed Train-Miles,	852,940	
64. Special Train-Miles,	11,697	
65. TOTAL REVENUE TRAIN MILEAGE,		21,040,990
66. Nonrevenue Service Train-Miles,		1,701,991

TRAFFIC AND MILEAGE STATISTICS—STATE OF .....

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILS.
PASSENGER TRAFFIC:				
1. Number of Passengers Carried Earning Revenue,	2,168,347			
2. Number of Passengers Carried One Mile,	159,247,320			
3. Number of Passengers Carried One Mile per Mile of Road,	154,708			
4. Average Distance Carried,* miles,	73.44			
5. Total Passenger Revenue—Page 45,		2,955,868	51	
6. Average Amount Received from each Passenger,†			136	6.94
7. Average Receipts per Passenger per Mile,†			01	729
8. Total Passenger Service Train Revenue—Page 45,		3,496,364	65	
9. Passenger Service Train Revenue per Mile of Road,*		3,584.15		
10. Passenger Service Train Revenue per Train-Mile,†			169	3.92
FREIGHT TRAFFIC:				
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	6,418,870			
12. Number of Tons Carried One Mile,	1,091,290,482			
13. Number of Tons Carried One Mile per Mile of Road,	1,103,052			
14. Average Distance Haul of One Ton,* miles,	170.03			
15. Total Freight Revenue—Page 45,		9,509,077	39	
16. Average Amount Received for each Ton of Freight,†			1.48	1.54
17. Average Receipts per Ton per Mile,†			00	871
18. Freight Revenue per Mile of Road,*		9,611.83		
19. Freight Revenue per Train-Mile,†			4.92	5.03
TOTAL TRAFFIC:				
20. Operating Revenues—Page 45,		13,336,046	07	
21. Operating Revenues per Mile of Road,*		13,490.15		
22. Operating Revenues per Train-Mile,†			3.45	5.45
23. Operating Expenses—Page 65 (or 65A),		7,655,350	20	
24. Operating Expenses per Mile of Road,*		7,744.07		
25. Operating Expenses per Train-Mile,†			1.96	3.00
26. Net Operating Revenue (or Deficit)—Page 39,		5,680,696	67	
27. Net Operating Revenue (or Deficit) per Mile of Road,*		5,742.08		
28. Average Number of Passengers per Car-Mile,	18			
29. Average Number of Passengers per Train-Mile,	74			
30. Average Number of Passenger Cars per Train-Mile,*	5.20			
31. Average Number of Tons of Freight per Loaded Car-Mile,*	18.48			
32. Average Number of Tons of Freight per Train-Mile,*	497.88			
33. Average Number of Freight Cars per Train-Mile,*	35.07			
34. Average Number of Loaded Cars per Train-Mile,*	26.94			
35. Average Number of Empty Cars per Train-Mile,*	7.13			
36. Average Mileage Operated During Year,*	989.31			

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—STATE OF _____—CONTINUED.

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	2,342,745	
38. Passenger Locomotive-Miles	1,861,717	
39. Mixed Locomotive-Miles,	149,000	
40. Special Locomotive-Miles,	5329	
41. Switching Locomotive-Miles,	1,132,165	
42. TOTAL IN REVENUE SERVICE,		5,493,356
43. Nonrevenue Service Locomotive-Miles,		619,255
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	59,041,533	
45. Empty,	15,764,240	
46. Caboose,	2,105,579	
47. TOTAL,		76,965,552
Passenger Car-Miles—		
48. Passenger,	5,342,175	
49. Sleeping, Parlor, and Observation,	2,665,315	
50. Other Passenger-Train Cars,	3,269,219	
51. TOTAL,		11,276,929
Special Car-Miles—		
52. Freight—loaded,	19,200	
53. Freight—empty,	3,131	
54. Caboose,	1200	
55. Passenger,	6939	
56. Sleeping, Parlor, and Observation,	1,464	
57. Other Passenger-Train Cars,	916	
58. TOTAL,		33,010
59. TOTAL IN REVENUE SERVICE,		88,673,491
60. Nonrevenue Service Car-Miles,		1,942,065
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	2,423,236	
62. Passenger Train-Miles,	1,915,462	
63. Mixed Train-Miles,	1,116,638	
64. Special Train-Miles,	15,709	
65. TOTAL REVENUE TRAIN MILEAGE,		4,109,147
66. Nonrevenue Service Train-Miles,		570,253

FREIGHT TRAFFIC MOVEMENT—STATE OF .....

[Page 100 follows.]

[COMPANY'S MATERIAL EXCLUDED.]

COMMODITY.		FREIGHT ORIGINATING ON THIS ROAD.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS.	TOTAL FREIGHT TONNAGE.	
		Whole Tons.	Whole Tons.	Whole Tons.	Per Cent.
Products of Agriculture.	Grain,	1201886	272859	1474745	22 98
	Flour,	113688	1721	115409	1 80
	Other Mill Products,	6493	3785	69278	1 08
	Hay,	5057	2459	57516	90
	Tobacco,				
	Cotton,				
	Fruit and Vegetables,	110121	20543	130664	2 03
	Other Products of Agriculture,	2991		2991	05
	TOTAL,	1549236	301967	1851203	28 94
Products of Animals.	Live Stock,	136816	3780	140596	2 19
	Dressed Meats,	10238	11051	21289	33
	Other Packing-House Products,	1247	2604	3851	06
	Poultry, Game, and Fish,	23476	711	24187	38
	Wool,	13088	12	13100	20
	Hides and Leather,	5746	389	6135	10
	Other Products of Animals,				
	TOTAL,	190811	18547	209358	3 26
Products of Mines.	Anthracite Coal,	308132	6384	314516	4 90
	Bituminous Coal,	814196	5841	820037	12 78
	Coke,	21645	2885	24530	46
	Ores,	72470	78	72548	1 13
	Stone, Sand, and other like articles,	157564	7407	164971	2 57
	Other Products of Mines,				
	TOTAL,	1374007	27595	1401602	21 84
Products of Forests.	Lumber,	884100	78023	962123	14 99
	Other Products of Forests,	433935	126133	560068	8 72
	TOTAL,	1318035	204156	1522191	23 71
Manufactures.	Petroleum and other Oils,	22774	13948	36722	57
	Sugar,	8144	6513	14657	23
	Naval Stores,				
	Iron, Pig and Bloom,	19556	1973	21529	34
	Iron and Steel Rails,	34616	26383	60999	95
	Other Castings and Machinery,	80084	33735	69819	99
	Bar and Sheet Metal,	1917	20565	22488	35
	Cement, Brick, and Lime,	96856	59046	155902	2 41
	Agricultural Implements,	4020	20887	24907	37
	Wagons, Carriages, Tools, etc.,	83	10759	10840	17
	Wines, Liquors, and Beers,	36257	1938	57595	90
	Household Goods and Furniture,	18090	14275	32365	50
	Other Manufactures,	60215	33699	93914	1 46
	TOTAL,	392806	263125	655931	9 28
Merchandise, Miscellaneous: Other commodities not mentioned above,		568120	270335	838305	13 01
TOTAL TONNAGE—STATE,		5933265	1045125	6418390	100 00
TOTAL TONNAGE—ENTIRE LINE,		13432693	2140126	15896819	100 00

MILEAGE—ENTIRE LINE.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE OWNED. MAIN LINE.	LINE OWNED. BRANCHES AND SPURS.	LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.
Miles of single track,	2695.10	305.52		194.99		57.36	6000.97	38.84	26.50	5917.11
Miles of second track,	251.00	1.53		63.24		12.74	328.16	7.19		315.87
Miles of third track,	1.58						1.58			1.58
Miles of fourth track,										
Miles of yard track and sidings,	1315.71	337.21		40.24		108.90	1802.06	148.51	134.91	1558.85
TOTAL MILEAGE OPERATED (All Tracks).	4263.39	3392.26		298.57		179.00	8133.22	257.54	160.91	7793.41

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE OWNED. MAIN LINE.	LINE OWNED. BRANCHES AND SPURS.	LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS	TOTAL MILEAGE OPERATED	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.
Wisconsin	87.53	57.25				.85	145.66	.68	.11	144.67
Minnesota	584.16	460.94				13.79	1058.89	12.85	13.57	1031.53
North Dakota	377.54	805.12				.56	1183.22		5.32	1177.34
Montana	853.78	517.62		64.36		37.80	1473.56		7.50	1428.26
Idaho	83.34	227.70					311.04	25.05		311.04
Washington	669.23	936.24		130.63		1.81	1737.90	2.26		1736.09
Oregon	37.53	48.65				2.52	90.70			88.18
TOTAL MILEAGE OPERATED (Single Track).	2695.10	3053.52		194.99		57.36	6000.97	38.84	26.50	5917.11

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE OWNED. MAIN LINE.	LINE OWNED. BRANCHES AND SPURS.		TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.	REMARKS.
Wisconsin	87.53	57.25		144.78	.68	.11	144.67	
Minnesota	584.16	460.94		1045.10	12.85	13.57	1031.53	
North Dakota	377.54	805.12		1182.66		5.32	1177.34	
Manitoba		355.58		355.58			355.58	
Montana	853.78	534.29		1388.07		7.50	1380.57	
Idaho	83.34	227.70		311.04	25.05		311.04	
Washington	669.23	954.37		1623.59	2.26		1625.59	
Oregon	37.53	48.65		88.18			88.18	
TOTAL MILEAGE OWNED (Single Track).	2695.10	3443.90		6139.00	38.84	26.50	6112.50	

MILEAGE—STATE OF _____

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	504.16	460.94				13.79	1058.89	12.85	13.57	1031.51
Miles of second track,	131.60			61.65		11.62	204.87	81.01		193.25
Miles of third track,	1.50						1.50			1.50
Miles of fourth track,										
Miles of yard track and sidings,	304.96	71.15		8.10		80.51	544.72	82.21	43.96	420.91
TOTAL MILEAGE OPERATED (All Tracks).	1102.10	532.09		70.45		105.92	1810.96	76.47	57.13	1649.67

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	504.16	460.94				13.79	1058.89	12.85	13.57	1031.53
TOTAL MILEAGE OPERATED (Single Track).										

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	504.16	460.94		1045.10	12.85	13.57	1031.53	
TOTAL MILEAGE OWNED (Single Track).								

VIII A

TAXES AND ASSESSMENTS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privileges.			
Wisconsin	30 6 93					7 7 0 73		38 1 5 66
Minnesota				534 269 46		31 178 10		565 7 47 06
North Dakota	277 553 07					3 291 07		300 844 16
Montana	154 152 59				9 0 0 0	27 0 0 92		450 753 51
Idaho	70 679 78					20 98 89		92 778 67
Washington,	1012 415 08					228 531 50		1240 948 58
Oregon	20 439 53					526 10		20 965 63
* Detroit Office	111 57							111 57
TOTAL,	1905 976 55			534 269 46	9 0 0 0	276 339 66		2717 585 67

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privileges.			
Newport City	44.15							
Winnipeg	50.00							
Crewe	12.26							
Hoboken	1.71							
Los Angeles	2.09							
Ins. Premium	.93							
	111.57							
TOTAL,								

121

TORN PAGE

[Annual Report Form—State Commissions.]

Copy of
Abstract of

~~Copy~~ ANNUAL REPORT

OF

Northern Pacific Railway Company

TO THE

RAILROAD AND WAREHOUSE COMMISSION

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1908.

(Endorsed)
FILED
May 8th 1911
LOUISE B. TROTT
Clerk.

EXPLANATORY REMARKS.

Note.- During the fiscal year dividends were declared for four quarters @ 1¾ % on $155.000.000.- and for two quarters @ 1¾ % on 193.000.000 less $6.000 in Treasury

Note.- In addition to cash received for Stock issued as shown in column headed "Total Cash realized" $2.387.000 has been received in payment of subscriptions the receipts for which have not been surrendered for Stock Certificates

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. RATE.	DIVIDENDS DECLARED DURING YEAR. AMOUNT.
Capital Stock:									
Common,	2500000	100.	250000000	245613000	6000		245607000		
To be issued upon surrender of Subscription Receipts				2387000			2387000		See page 20
Preferred,									
TOTAL,	2500000		250000000	248000000	6000		247994000	7%	14 10 4 79000

PURPOSE OF THE ISSUE.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER OF SHARES OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash: <See page 20	Common,	906130	90613000	906130	90613000	Issued for the construction, acquisition and operation of this Company's Railway now in course of construction or acquisition or which may hereafter be constructed or acquired.
	Preferred,					
Issued for Construction of New Properties:	Common,					
	Preferred,					
Issued for Additions and Betterments:	Common,					
	Preferred,					
Issued for Purchase of Railway or Other Property:	Common,			1550000	155000000	Purchase of N.P.R.R. Co. property
	Preferred,					
Issued for Acquisition of Securities:	Common,					
	Preferred,					
Issued for Reorganization:	Common,					
	Preferred,					
	TOTAL,	906130	90613000	2456.30	245613000	

FUNDED DEBT.

CLASS OF BOND OR OBLIGATION.	TERM. Date of Issue.	TERM. Date of Maturity.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
MORTGAGE BONDS:											
St P. N. P. Ry											
General Mtge.	1883	1923		8021000			8021000	6	Feb'y	481260.00	481260.00
Nor. Pac. Ry									J. & D.		
Prior Lien	1897	1997	130000000	108006500	6065000	5800000	102101500	4	J. D.	4109450.00	4111325.00
General Lien	1897	2047	60000000	60000000	7449000	1068500	52551000	3	J. & D.	1641212.50	1664520.75
St Paul Duluth Div.	1900	1996	20000000	8078000	191000	98000	7889000	4	J. D.	309760.00	306880.00
St Paul & Duluth R.R.											
First mortge.	1881	1931	1000000	1000000	-	-	1000000	5	J. & J.	50000.00	50075.00
Second "	1887	1917	2000000	2000000	-	-	2000000	7	A. O.	140000.00	140700.00
Pigeon Bonds for First Extension, Minnesota Point	1891	1965	5000000	1000000	-	-	1000000	4	J. D.	40000.00	39866.00
St. C. Jct. R.R.	1884	1914	210000	210000	-	-	210000	6	J. & J.	12600.00	12600.00
Duluth Short Line Ry	1886	1916	500000	500000	-	-	500000	5	M. & S.	25000.00	25625.00
York & Bal. Ry											
First Mortgage	1895	1935	2622000	2622000	2477820		144180	4	July	5772.00	5532.00
COLLATERAL TRUST BONDS:											
INCOME BONDS:											
MISCELLANEOUS OBLIGATIONS:											
Collateral Trust Bonds											
Nor. Pac.-St. Paul Jct.											
& Bot. Collateral	1901	1921	222400000	215227000							
Nor. Pac. Ry. Co. proportion				107613500	3685000	1240000	102925500	4	Jan'y	4117020.00	4117020.00
TOTAL.				299651000	19807000	8119820	279244000			10947035.75	11021279.82

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION.		TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST.	
		IN TREASURY.	IN SINKING OR OTHER FUNDS.		AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
Mortgage Bonds,	191437500	16122000		175315500	6775002.50	6848578.75
Plain Bonds, Debentures, and Notes,	107613500	3685000		103928500	4172701.07	4172701.07
Collateral Trust Bonds,						
Income Bonds,						
Miscellaneous Obligations,						
Equipment Trust Obligations,						
TOTAL,	299051000	19807000		279244000	10947703.57	11021279.82

PURPOSE OF THE ISSUE.	TOTAL PAR VALUE ISSUED DURING THE YEAR.	CASH REALIZED ON ACCOUNT ISSUED DURING THE YEAR.	TOTAL PAR VALUE OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:					
Issued for Construction of New Properties:					
Issued for Additions and Betterments:					
Issued for Purchase of Railway or Other Property:					
Issued for Acquisition of Securities:	500	Pledged	107613500		Issued for L. Br. G. R. R. Stock
Issued for Refundment of Securities:	178000	In Treasury	23392500		
Issued for Reorganization:			129816500	A majority of the Common Stock of the Company was issued in exchange for securities of former organizations and cannot be valued in cash here.	
Assumed in Reorganization			8021000		
Acquisition of Securities			7330000		
Issued for New Acquisitions + Betterments	1500000	In Treasury	22877500		
TOTAL,	1678500		299051000		

EXPLANATORY REMARKS.

Construction Advances to Railway Companies

Spokane, Portland & Seattle Ry Co	$28.888.997.95
Clearwater Short Line	7.582.417.70
Big Fork & International Falls Ry Co.	735.674.24
Missouri River Ry Co	119.015.38
Western Dakota Ry Co	291.932.67
Shields River Valley Ry Co	169.392.70
	$ 37.787.430.64

RECAPITULATION OF CAPITALIZATION.

ACCOUNT.	TOTAL PAR VALUE OUTSTANDING.	ASSIGNMENT. TO RAILWAYS.	ASSIGNMENT. TO OTHER PROPERTIES.	AMOUNT PER MILE OF LINE. [See Instructions.] MILES.	AMOUNT PER MILE OF LINE. [See Instructions.] AMOUNT.	REMARKS.
Capital Stock—Page 21,	24561300	24561300		621.84	39493	
Funded Debt—Page 27,	19143750	19143750		621.84	30783	
Collateral Trust Bonds	10761350	10761350				Not a lien on the N.P. mileage
TOTAL,	54466400	54466400			70278	

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
			✓				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1908.	
Cash,	3320045203	Receiver's Certificates,	
Bills Receivable,	387327192	Loans and Bills Payable,	
Due from Agents,	7852892	Audited Vouchers and Accounts,	4570652257
Due from Solvent Companies and Individuals,	80945103	Wages and Salaries,	2565205772
Traffic Balances due from other Companies,	1158284267	Traffic Balances due to other Companies,	72269871
Other Cash Assets [Excluding "Materials and Supplies."],		Dividends not Called for,	434154450
Construction Advances to Railway Companies See page 28.	3778743062	Matured Interest Coupons Unpaid [Including Coupons Due July 1],	11258950
		Rents due July 1, Taxes Accrued	17076522
		Miscellaneous, Renewal Funds	1215824923
TOTAL—CASH AND CURRENT ASSETS,	8492921161	TOTAL—CURRENT LIABILITIES,	2718065255
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	5774855906
TOTAL,	8492921161	TOTAL,	8492921161

Materials and Supplies on hand, $6,164,685.92

[See General Balance Sheet—Page 83.]

ADDITIONS AND BETTERMENTS EXPENDITURES.

ACCOUNT.	EXPENDITURES DURING YEAR. CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS.	CHARGED TO INCOME.	TOTAL. [See pages 35 and 35.]
1. Right of Way and Station Grounds,	11[illegible]5567[illegible]			
2. Real Estate,				
3. Widening Cuts and Fills,	2[illegible]97066			
4. Protection of Banks,	27[illegible]288			
5. Grade Revisions and Changes of Line,	[illegible]46[illegible]5			
6. Tunnel Improvements,	26[illegible]56			
7. Bridges, Trestles, and Culverts,	230[illegible]5[illegible]29			
8. Increased Weight of Rail, and Fastenings	20[illegible]2[illegible]91			
9. Ballast,	9[illegible]2900			
10. Additional Main Tracks,	85[illegible]2[illegible]3			
11. Sidings and Spur Tracks,	21[illegible]5[illegible]77			
12. Terminal Yards,	26[illegible]1526			
13. Fencing Right of Way,	29[illegible]2089			
14. Improvement of Over and Under Grade Crossings,	[illegible]2536			
15. Track Elevation, Elimination of Grade Crossings, etc.,	2[illegible]2[illegible]54			
16. Interlocking Apparatus,	[illegible]5[illegible]403			
17. Block and Other Signal Apparatus,	[illegible]32647			
18. Telegraph and Telephone Lines,	2[illegible]6882			
19. Station Buildings and Fixtures,	20[illegible]0894			
20. Shops, Enginehouses, and Turntables,	2[illegible]8[illegible]11			
21. Shop Machinery and Tools,	21[illegible]055			
22. Water and Fuel Stations,	29[illegible]791			
23. Grain Elevators and Storage Warehouses,				
24. Dock and Wharf Property,	[illegible]0[illegible]0927			
25. Electric Light and Power Plants,				
26. Electric-Power Transmission,				
27. Gas-Producing Plants,				
28. Snow and Sand Fences and Snow Sheds,				
29. Miscellaneous Structures,	47[illegible]9[illegible]2			
30. Reconstruction of Road Purchased,				
31. Steam Locomotives,				
32. Electric Locomotives,				
33. Passenger-Train Cars,				
34. Freight-Train Cars,				
35. Work Equipment,				
36. Floating Equipment,				
37. Interest, Discount, and Commission,				
TOTAL—ENTIRE LINE,	[illegible]4[illegible]2[illegible]111			
TOTAL—STATE OF [illegible] Sub.	Report by State			

EXPENDITURES FOR ROAD.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO CAPITAL.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO SPECIAL FUNDS OR INCOME.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. (See page 33.) CHARGED TO CAPITAL.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. (See page 33.) CHARGED TO SPECIAL FUNDS OR INCOME.	TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
I. ROAD:						
1. Engineering,	1865240.8		3526338			
2. Right of Way and Station Grounds,	489729.27		1169097			
3. Real Estate,	20771.95					
4. Grading,	3949840.90		1806481			
5. Tunnels,	194460.18					
6. Bridges, Trestles, and Culverts,	1214008.42		341357.45			
7. Ties,	1449476.4		623679.1			
8. Rails,	622536.89		3136048.5			
9. Frogs and Switches,	187908.6		80661.38			
10. Track Fastenings and Other Material,	141334.22		385485.47			
11. Ballast,	556712.13		664238.48			
12. Track Laying and Surfacing,	486835.81		826501.4			
13. Roadway Tools,	31518.0		25773			
14. Fencing Right of Way,	56709.2		265848.0			
15. Crossings and Signs,	136443.90		260306.6			
16. Interlocking and Other Signal Apparatus,	87039.9		230776.6			
17. Telegraph and Telephone Lines,	65822.3		396223.7			
18. Station Buildings and Fixtures,	743288.9		2677852.0			
19. General Office Buildings and Fixtures,						
20. Shops, Enginehouses, and Turntables,	3679664.4		1344285			
21. Shop Machinery and Tools,	109259		53489			
22. Water Stations,	1143637.1		623150			
23. Fuel Stations,	567197.7		544049			
24. Grain Elevators,						
25. Storage Warehouses,						
26. Dock and Wharf Property,	1418520		1036916			
27. Electric-Light Plants,						
28. Electric-Power Plants,						
29. Electric-Power Transmission,						
30. Gas-Producing Plants,						
31. Miscellaneous Structures,	4805808		1135.20			
32. Transportation of Men and Material,	429550					
33. Rent of Equipment,	1221047.2					
34. Repairs of Equipment,	80501.8					
35. Earnings and Operating Expenses during Construction,	55652					
36. Cost of Road Purchased,	1445867		166305			
Net proceeds of Lands Sold	1993357.48					
TOTAL,	15643706.7					
	85193298		18016585		338867868.84	349188514.67

100837.00.23

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO CAPITAL.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO SPECIAL FUNDS OR INCOME.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 35.] CHARGED TO CAPITAL.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 35.] CHARGED TO SPECIAL FUNDS OR INCOME.	TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
II. EQUIPMENT:						
37. Steam Locomotives,	202151.03					
38. Electric Locomotives,						
39. Passenger-Train Cars,	826601.38					
40. Freight-Train Cars,	890641.17					
41. Work Equipment,	40947.67					
42. Floating Equipment,						
TOTAL,	1960341.25				39641897.89	41602239.14
III. GENERAL EXPENDITURES:						
43. Law Expenses,	54636		103			
44. Stationery and Printing,	71715					
45. Insurance,	60397		23423			
46. Taxes,	656767					
47. Interest and Commissions,	117187					
48. Other Expenditures,	4485					
TOTAL,	965187		23526		27.854.98	281772.11
RECAPITULATION.						
I. ROAD,	8519329.98		1801613.85		338867.568.84	349.168.814.67
II. EQUIPMENT,	1960341.25				39641.897.89	41602.239.14
III. GENERAL EXPENDITURES,	965187		23526		27.854.98	281.772.11
TOTAL—ENTIRE LINE,	10479322.10		1801.851.11		378781.651.71	391.272.825.92
TOTAL—STATE OF MINNESOTA	Record of Expenditures in State.					
Cost of Road per Mile of Line,	Increase in property purchased at present value estimated at only $1,000 per acre of land, it would be manifestly misleading to figure out for me an amount shown					
Cost of Equipment per Mile of Line,						
General Expenditures per Mile of Line,						
TOTAL PER MILE OF LINE,						
Total per Mile of Line—State of MINNESOTA	✓					

INCOME ACCOUNT.

[FOR COMPANIES MAKING OPERATING REPORTS.]

OPERATING INCOME:																		
Rail Operations:																		
Operating Revenues—Page 45,			68	460	747	21	•	•	•		•	•	•					
Operating Expenses—Page 65,			38	020	046	5	•	•	•		•	•	•					
NET OPERATING REVENUE,			•	•	•		30	440	700	56	•	•	•					
NET OPERATING DEFICIT,			•	•	•						•	•	•					
Outside Operations—Page 67, A:																		
Revenues,			1	713	772	94	•	•	•		•	•	•					
Expenses,			1	284	413	36	•	•	•		•	•	•					
NET REVENUE,			•	•	•			429	359	58	•	•	•					
NET DEFICIT,			•	•	•						•	•	•					
TOTAL NET REVENUE,			•	•	•		30	870	102	14	•	•	•					
TOTAL NET DEFICIT,			•	•	•						•	•	•					
Taxes Accrued—Page 121, A,			•	•	•		2	547	534	67	•	•	•					
OPERATING INCOME,			•	•	•		•	•	•		28	322	567	47				
OPERATING LOSS,			•	•	•		•	•	•									
OTHER INCOME:																		
Rents Accrued from Lease of Road—Page 69,			•	•	•		2	19	957	66	•	•	•					
Other Rents—Credits:																		
(a) Hire of Equipment—Balance—Page 81,				452	218	91	•	•	•		•	•	•					
(b) Joint Facilities—Page 69,				474	072	17	•	•	•		•	•	•					
(c) Miscellaneous Rents—Page 71,																		
			•	•	•			926	291	08	•	•	•					
Separately Operated Properties—Profit—Page 75,			•	•	•						•	•	•					
Dividends Declared on Stocks Owned or Controlled—Pages 49 and 57,			•	•	•		5	103	779	89	•	•	•					
Interest Accrued on Funded Debt Owned or Controlled—Pages 53 and 57,			•	•	•			514	096	66	•	•	•					
Interest on Other Securities, Loans, and Accounts,			•	•	•			893	198	08	•	•	•					
Miscellaneous Income—Page 71,			•	•	•			212	554	16	•	•	•					
TOTAL OTHER INCOME,			•	•	•		•	•	•		7	766	877	53				
Gross Corporate Income carried forward,			•	•	•		•	•	•		36	193	147	00				
Gross Corporate Loss carried forward,			•	•	•		•	•	•									

INCOME ACCOUNT—CONTINUED.

[FOR COMPANIES MAKING OPERATING REPORTS.]

Gross Corporate Income brought forward,				36192147 00
Gross Corporate Loss brought forward,				
DEDUCTIONS FROM GROSS CORPORATE INCOME:				
Rents Accrued for Lease of Other Roads—Page 73,		1254586		
Other Rents—Debits:				
(a) Hire of Equipment—Balance—Page 81,				
(b) Joint Facilities—Page 73,	2104965			
(c) Miscellaneous Rents—Page 75,	121483			
		2116848		
Separately Operated Properties—Loss—Page 75,				
Interest Accrued on Funded Debt—Page 27,		10947057		
Other Interest, Int. on Common on New Stock Sub		326516700		
Sinking Funds Chargeable to Income,				
Other Deductions—Page 75,				
TOTAL DEDUCTIONS FROM GROSS CORPORATE INCOME,				145530491
NET CORPORATE INCOME,				21639140 09
NET CORPORATE LOSS,				
DISPOSITION OF NET CORPORATE INCOME:				
Dividends Declared:				
(a) On Preferred Stock—Page 21:				
per cent payable				
per cent payable	✓			
per cent payable				
per cent payable				
TOTAL,				
(b) On Common Stock—Page 21:				
1¾ per cent payable Nov. 2. 1908	27125000			
1¾ per cent payable Feb. 1. 1909	27125000			
1¾ per cent payable May 1. 1909	43398500			
1¾ per cent payable Aug 2. 1909	43398500			
TOTAL,		141047900		
(c) On Other Securities—Page 21:				
per cent payable				
Additions and Betterments Charged to Income—Page 33,				141047900
Appropriations to Reserves,				
Miscellaneous:				
BALANCE FOR YEAR CARRIED FORWARD TO OF PROFIT AND LOSS,				7524350 09

PROFIT AND LOSS ACCOUNT.

DEBIT.		CREDIT.	
Balance June 30, 1907.		Balance June 30, 1907.	50611364 53
Balance for year brought forward from Income Account, Other Properties—Loss—Page 67, B.		Balance for year brought forward from Income Account, Other Properties—Profit—Page 67, B.	7534009
Deductions for Year:		Additions for Year:	
Sundry Stranded accounts charged off	109131	Unclaimed Wages Appropriated	123506
		Premium on Sale of Bonds	150000
		Cash found in Safes unclaimed	3170
Dividends Declared out of Surplus:			
(a) On Preferred Stock—Page 21 per cent payable per cent payable			
(b) On Common Stock—Page 21 per cent payable per cent payable			
(c) On Other Securities—Page 21 per cent payable			
Balance Credit, June 30, 1908, carried to Balance Sheet—Page 85,	58172288 07 ~~58173309 38~~ 58173309 38	Balance Debit, June 30, 1908, carried to Balance Sheet—Page 83,	58173309 38

OPERATING REVENUES—STATE OF .....

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			1533994403
2. Passenger Revenue,			10598729
3. Excess Baggage Revenue,			143691
4. Parlor and Chair Car Revenue,			
5. Mail Revenue,			2239434
6. Express Revenue,			809868
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger-Train Revenue,			406341
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			1283538631
9. Switching Revenue,	(No entries required in this column for 1908.)	(No entries required in this column for 1908.)	25311779
10. Special Service Train Revenue,			71546
11. Miscellaneous Transportation Revenue,			840711
TOTAL REVENUE FROM TRANSPORTATION,			3181773302
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			7122
13. Parcel-Room Receipts,			
14. Storage—Freight,			533703
15. Storage—Baggage,			92477
16. Car Service,			1801777
17. Telegraph Service,			332142
18. Rents of Buildings and Other Property,			3750875
19. Miscellaneous,			443972
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			10957168
20. Joint Facilities Revenue - Dr.			35936
21. Joint Facilities Revenue - Cr.			3276935
TOTAL OPERATING REVENUES—STATE,			3223554225
TOTAL OPERATING REVENUES—ENTIRE LINE,			6346074721

Operating revenues from interstate business accruing to the State of Minnesota divided on straight mileage basis, see note 2, page 44.

OPERATING REVENUES.
STATE OF MINNESOTA.

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			$22784907
2. Passenger Revenue,			1877903 75
3. Excess Baggage Revenue,			24076 30
4. Parlor and Chair Car Revenue,			
5. Mail Revenue,			
6. Express Revenue,			203721 07
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger Train Revenue,			5438 90
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			2118163 02
9. Switching Revenue,			55 50
10. Special Service Train Revenue,			9314 94
11. Miscellaneous Transportation Revenue,			1 40
TOTAL REVENUE FROM TRANSPORTATION,			10350386 83
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			
13. Parcel-Room Receipts,			
14. Storage—Freight,			
15. Storage—Baggage,			
16. Car Service,			
17. Telegraph Service,			
18. Rents of Buildings and Other Property,			
19. Miscellaneous,			
20. Joint Facilities Revenue - Dr.			
21. Joint Facilities Revenue - Cr.			
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			
TOTAL OPERATING REVENUES,			10350386 83
TOTAL OPERATING REVENUES, Pages 45 and 45a.			13674241 08

NOTE: This Company and the Great Northern Railway Company are to receive the entire authorised capital stock of the Spokane Portland & Seattle Railway Company, and $40 000 000 of First Mortgage Bonds in payment for construction advances. As only a portion of the stock has been issued and none of the bonds, no adjustment has been made, and the stock issued has not yet been taken up on the books of this Company.

Note A Roads under construction

NOTE: This Company is to receive the entire issue of securities of the Big Fork & International Falls Railway Company. No adjustment has been made and the small amount of stock issued has not yet been taken up on the books of this company.

RAILWAY STOCKS OWNED.

1. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF STOCKS OWNED NOT HELD IN SINKING OR OTHER FUNDS.		RATE.	DIVIDENDS DECLARED.	VALUATION.
	UNPLEDGED.	PLEDGED.			
Stocks of Respondent Corporation:					
New Common Stock	6000000				6000000
Stocks of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Washington Central Railway Co	10000000				22127994
St. Paul Union Depot Co	598500		4%	41400	598500
		437500			
Lake Superior Terminal & Transfer Co	1368000				1700100
Duluth Union Depot & Transfer Co		3000000	5%	150000	
~~Tacoma Tramway Railway Co~~		~~1000~~			
Stocks of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
Missouri River Railway Co Note A.	3000000				3000000
Western Dakota Railway Co " "	100000				100000
Connell Northern Railway Co " "	300000				500000
Shields River Valley Railway Co " "	100000				100000
Minnesota & International Railway Co		350000	5%	17500	
$10,000 Capital Stock of the Big Foot & Eastern Belt Ry Co. Sup. p. 41					
$2,000,000 Capital Stock of the Stock Port & Seattle Ry Co. Sup. p. 41					
Chicago Burlington & Quincy R.R. Co. (Collateral)		53806750	8%	4304535	109114809
Chicago Burlington & Quincy R.R. Co. (Treasury Acct)	125000		8%	10000	2509375
TOTAL,	1585150	5450750		4341600	109894034

II - Inactive Corporations

	Name of Security	Total par value of Stock outstanding	Par value of stocks owned Unpledged	Pledged	Valuation of Stocks owned
Cle Elum Railroad	Common Stock	$ 300 000.00		$ 300 000.00	
Duluth & Manitoba Railway		2 000 000.00		2 000 000.00	
Duluth Crookston & Nort ern RR		5 000 000.00		5 000 000.00	
Jamestown & Northern Extension RR		1 600 000.00		1 600 000.00	
Spokane Falls & Idaho Railroad		500 000.00		500 000.00	
Helena & Red Mountain Railroad		400 000.00		380 000.00	
Spokane & Palouse Ry (Idaho Division)		1 000 000.00		1 000 000.00	
James River Valley Railroad		1 000 000.00		1 000 000.00	
Coeur d'Alene Ry & Navigation Co		1 000 000.00	1 000 000.00		
Central Washington Railroad		1 500 000.00	1 500 000.00		
Northern Pacific & Montana RR		5 306 100.00		5 306 100.00	
Little Falls & Dakota Railroad		1 463 387.50		1 463 237.50	
Northern Pac.Fergus Falls & Black Hills RR		15 000 000.00		15 000 000.00	
Fargo & Southwestern Railway		4 000 000.00		4 000 000.00	
Northern Pacific & Puget Sound Shore RR		275 000.00		275 000.00	
Southeastern Dakota Railway		133 500 00		133 500.00	
Northern Pac LaMoure & Missouri Riv RR		318 000.00		318 000.00	
Northern Pacific & Cascade RR		225 000.00		225 000.00	
Northern Pacific & Manitoba Ry (The Manitoba Ry)		1 423 200.00		1 423 200.00	
Jamestown & Northern Railroad		3 200 000.00		3 200 000.00	
Green River & Northern Railroad		424 000.00		424 000.00	
Tacoma Orting & Southeastern Ry		172 000.00		172 000.00	
Rocky Fork & Cooke City R R		2 000 000.00		2 000 000.00	
United Railroads of Washington		4 961 000.00		4 961 000.00	
Sanborn Cooperstown & Turtle Mtn Rk		300 000.00		300 000.00	
Rocky Mountain Railroad of Montana		1 000 000.00		1 000 000.00	
Helena & Jefferson County R R		402 000.00		402 000.00	
St Paul & Northern Pacific Railway		7 000 000.00		7 000 000.00	
Seattle & International Railway		2 400 000.00		2 400 000.00	
Montana Union and Montana Railways		1 450 000.00		1 450 000.00	
St Paul & Duluth Railroad	Com Stk & Scrip	4 662 345.18	149.07	4 659 862.07	
Stillwater Union Depot & Transfer Co	Common Stock	175 000.00		175 000.00	
Monte Cristo Railway		1 200 000.00		1 200 000.00	
Bellingham Bay & Eastern Railway		250 000.00		250 000.00	
Washington Railway & Nav Co Lines		450 000.00		450 000.00	
Seattle & San Francisco Ry & Nav Co Li s		2 422 700.00	2 422 700.00		
Washington & Columbia River Railway		3 000 000.00	3 000 000.00		
Drummond & Philipsburg Railroad		500 000.00	700.00	499 300.00	
Helena Boulder Valley & Butt R R		600 000.00	600.00	599 400.00	
Helena & Northern Railroad		600 000.00	600.00	599 400.00	
Missoula & Bitter Root Valley R		1 000 000.00	700.00	999 300.00	
Puget Sound Shore Railroad		500 000.00	500 000.00		
Gaylord & Ruby Valley Railway		225 000.00		225 000.00	
Spokane & Seattle Railway		600 000.00		600 000.00	
Little Falls & Southern Railway		50 000.00		50 000.00	
Stillwater & St Paul Railroad		400 000.00		399 500.00	
Duluth Short Line Railway		600 000.00		600 000.00	
Grantsburg Rush City & St Cloud R R		8 050.00		7 900.00	
St Cloud Grantsburg & Ashland R R		29 210.00		28 460.00	
Taylors Falls & Lake Superior R R		405 000.00		486 000.00	
Lake Superior & Mississippi R R		99 600.00		1 800.00	
Seattle Lake Shore & Eastern R R		4 150 050.00	3 162 650.00		
Portland Vancouver and Yakima Railway		290 000.00	200 000.00		
Washington & Oregon Railway		250 000.00	250 000.00		
Clearwater Short Line Railway		2 127 200.00	2 127 200.00		2 127 200.00
TOTAL		$90 127 312.68	$14 [illegible] 299.07	74 879 379.97	2 127 200.00

Pledged stocks deposited with Trustees of Mortgages - no value

Unpledged stocks in hands of Assistant Treasurer - no valuation except as shown.

RAILWAY FUNDED DEBT OWNED.

1. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF FUNDED DEBT OWNED NOT HELD IN SINKING OR OTHER FUNDS.		RATE.	INTEREST ACCRUED.	VALUATION.
	UNPLEDGED.	PLEDGED.			
Funded Debt of Respondent Corporation:					
First Lien Mortgage Bonds	60080000				61790975
General Lien Mortgage Bonds	7449000				5573730
St. Paul, Eastern Grand Terminal Bonds	1910000				1907375
Northern Pacific Collateral Bonds	2325000				2324375
Funded Debt of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Washington Columbia River Railway Co.	24770000				23946250
Minnesota Transfer Ry Co.	620000		4%	22704	620000
Northern Pacific Terminal Co. of Oregon	7400000		6%	444000	8510000
Washington Central Railway Co.			4%	231433	
Funded Debt of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
Chicago Burlington & Quincy R.R. Co. Joint Mortge	500000000		4%	6666667	4941487.50
Colorado & Southern Ry Co. Refunding & Extn Mortge	10000000		4½%	142999	1000139.4
Minnesota & International Ry Co. Mortgage		21450000	5%	1072500	-
Atch. Topeka & Santa Fe. Trustees Short Line Mortge			4%	61600	-
Southern Pacific First Refunding Mortgage			4%	196000	-
Oregon Short Line. Refunding Mortgage			4%	313333	-
TOTAL,	2504300000	21450000		2340966	2315164965

II - Inactive Corporations.

	Name of Security	Total par value of funded debt outstanding	Par value of funded debt owned Unpledged	Par value of funded debt owned Pledged	Valuation of funded debt owned
Olcalum Railroad	First Mtge Bonds	$ 68 000.00		$ 68.000.00	
Duluth & Manitoba Railway		3 101 000.00		3 101 000.00	
Duluth Crookston & Northern Ry		889 000.00		889 000.00	
Jamestown & Northern Extension R R		270 000.00		270 000.00	
Spokane Falls & Idaho R R		370 000.00		370 000.00	
Helena & Red Mountain R R		400 000.00		387 000.00	
Spokane & Palouse Railway		2 984 000.00		2 981 000.00	
James River Valley Railroad		963 000.00		962 000.00	
Coeur d'Alene Ry & Nav Co		1 238 000.00	1 237 000.00		
Central Washington Railway		2 180 000.00	2 180 000.00		
Northern Pacific & Montana R R		8 843 000.00		8 778 000.00	
Little Falls & Dakota R R		1 577 429.00		1 577 429.00	
Northern Pac Fergus & Black Hills R R		2 102 701.00		2 102 701.00	
Fargo & Southwestern Railway		1 569 398.00		1 569 398.00	
Northern Pac & Puget Sound Shore RR		1 583 000.00		1 383 000.00	
Southeastern Dakota Railway		133 000.00		133 000.00	
Nor Pac LaMoure & Missouri River RR		318 000.00		318 000.00	
Northern Pacific & Cascade R R		388 000.00		388 000.00	
Nor Pac & Manitoba Ry (The Manitoba Ry)		5 576 800.00		5 576 800.00	
Jamestown & Northern Railroad		1 843 916.00		1 843 916.00	
Green River & Northern Railroad		375 000.00		375 000.00	
United Railroads of Washington		5 298 000.00		5 298 000.00	
Sanborn Cooperstown & Turtle Mtn RR		665 750.00		665 750.00	
Rocky Mountain R R of Montana		942 941.00		942 941.00	
Helena & Jefferson County R R		366 599.00		366 599.00	
Seattle & International Railway		4 450 000.00		4 450 000.00	
Minneapolis & Duluth Railroad		380 000.00	380 000.00		
Bellingham Bay & Eastern Ry		500 000.00		500 000.00	
Seattle & San Francisco Ry & Nav Co Lines		1 231 000.00	1 231 000.00		
Wash.& Columbia River Ry	Income Bonds	2 245 000.00	2 245 000.00		
Spokane & Seattle Railway	First Mtge Bonds	1 113 000.00		1 113 000.00	
Seattle Lake Shore & Eastern Ry		5 675 000.00	5 670 000.00		
Stillwater & St Paul Railroad		196 500.00		196 500.00	
Total		$59 458 034.00	13 843 000.00	46 505 034.00	

No valuation - Pledged bonds deposited with Trustee of Mortgages
Unpledged bonds in hands of Assistant Treasurer.

MISCELLANEOUS STOCKS AND FUNDED DEBT OWNED.

A. OTHER THAN RAILWAY STOCKS.

NAME.	TOTAL PAR VALUE OF SECURITIES OWNED.	RATE.	DIVIDENDS DECLARED.	VALUATION.
Northwestern Improvement Co	2775000 00			2775000 00
Northern Pacific Express Co	343000 00		362170 89	
			400000 00	Pledged
Alaska-Yukon Pacific Exposition	25000 00			100
Lewiston Terminal Co	34500			100
TOTAL,	3143345 00		762170 89	2775002 00

B. OTHER THAN RAILWAY FUNDED DEBT.

NAME.	TOTAL PAR VALUE OF SECURITIES OWNED.	RATE.	INTEREST ACCRUED.	VALUATION.
Northwestern Improvement Co	7000000 00	4%	280000 00	7000000 00
Alaska-Yukon Pacific Exposition	10000 00			10000 00
TOTAL,	7010000 00		280000 00	7010000 00

SINKING, INSURANCE, AND OTHER FUNDS.

A. INCOME AND DISBURSEMENTS DURING YEAR.

NAME OF FUND.	INCOME.				DISBURSEMENTS.
	CASH APPROPRIATIONS TO FUND.	INCOME TO FUND FROM INVESTMENTS.	OTHER INCOME TO FUND.	TOTAL.	
Insurance Fund		152754 10	207919 31	360673 41	22 39506
TOTAL.,					

B. ASSETS ON JUNE 30, 1908.

NAME OF FUND.	SECURITIES IN FUND.			CASH IN FUND.	TOTAL.
	NAME.	PAR VALUE.	COST.		
Insurance Fund Assets					
Nor. Pacific Ry Co	General Lien Bonds	10665000 00	6786157 70		
" "	Prior " "	576000 00	604202 89		
" "	St Paul-Duluth Div Bonds	371000 00	371004 67		
Washington Central Ry Co	Bonds	99500 00	97294 33		
Nor. Pac. & Northern	Joint Collateral Bonds	1304000 00	1295747 69		
Southern Pacific Ry	First Refunding "	700000 00	668680 56		
Atch. Topeka & Santa Fe	Gramac Short Line "	220000 00	212085 83		
Oregon Short Line	Refunding	100000 00	95000 00		4899281 67
Nor. Pac. Ry Co	Stock	80000 00	57937 50		
" "	New Stock	15000 00	15000 00		72937 50
Cash				165057 18	165057 18
TOTAL,		3396000 00	4974219 17	165057 18	5139276 35

OPERATING EXPENSES—ENTIRE LINE.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (Per Cent.)	RATIO TO TOTAL OPERATING EXPENSES. (Per Cent.)
I. MAINTENANCE OF WAY AND STRUCTURES:			
Superintendence,	384 963 23	4.85	1.02
Ballast,	150 067 74	1.85	.39
Ties,	1297 991 44	16.25	3.41
Rails,	298 121 88	3.74	.78
Other Track Material,	516 496 04	6.48	1.36
Roadway and Track,	344 711 62	4.32.4	.905
Removal of Snow, Sand, and Ice,	181 326 17	2.27	.48
Tunnels,	34 319 17	.43	.09
Bridges, Trestles, and Culverts,	499 321 90	6.26	1.31
Over and Under Grade Crossings,	43 345 17	.85	.01
Grade Crossings, Fences, Cattle Guards, and Signs,	99 603 28	1.25	.26
Snow and Sand Fences and Snow Sheds,	25 064 10	.5	.07
Signals and Interlocking Plants,	26 836 81	.34	.07
Telegraph and Telephone Lines,	85 563 89	1.11	.23
Electric Power Transmission,			
Buildings, Fixtures, and Grounds,	711 267 58	9.20	1.88
Docks and Wharves,	69 858 13	.87	.18
Roadway Tools and Supplies,	87 099 11	1.09	.22
~~Work Equipment—Repairs,~~			
~~Work Equipment—Renewals,~~			
~~Work Equipment—Depreciation,~~			
Injuries to Persons,	40 237 40	.50	.10
Stationery and Printing,	8 603 70	.11	.02
Insurance,			
Other Expenses,	7 982 80	.10	.01
Total of Foregoing Accounts,	7 977 340 43	100 -	20.98
Maintaining Joint Tracks, Yards, and Other Facilities—Dr.,	61 078 85		
Maintaining Joint Tracks, Yards, and Other Facilities—Cr.,	187 849 16		
TOTAL—MAINTENANCE OF WAY AND STRUCTURES,	7847 068 32		
II. MAINTENANCE OF EQUIPMENT:			
Superintendence,	171 706 84	2.19	.45
Steam Locomotives—Repairs,	2315 056 96	29.53	6.08
Steam Locomotives—Renewals,	53 496 61	.7	.1
Steam Locomotives—Depreciation,	859 394 70	10.96	2.26
Electric Locomotives—Repairs,			
Electric Locomotives—Renewals,			
Electric Locomotives—Depreciation,			
Passenger-Train Cars—Repairs,	450 616 59	5.74	1.18
Passenger-Train Cars—Renewals,	38 408 10	.48	.10
Passenger-Train Cars—Depreciation,	230 741 61	2.94	.61
Freight-Train Cars—Repairs,	1735 408 56	22.11	4.55
Freight-Train Cars—Renewals,	196 697 8	2.5	.5
Freight-Train Cars—Depreciation,	1605 700 14	20.48	4.21
Work ~~Electric Equipment of Cars~~—Repairs,	220 612 92	2.81	.58
Work ~~Electric Equipment of Cars~~—Renewals,	10 173 63	.1	-
Work ~~Electric Equipment of Cars~~—Depreciation,	51 395 44	.66	.13
Floating Equipment—Repairs,	120 277 9	.02	-
Floating Equipment—Renewals,			
Floating Equipment—Depreciation,	77 681 3	.10	.02
Shop Machinery and Tools,	108 978 12	1.39	.29
Power Plant Equipment,			
M. E. Expenses carried forward,	7818 196 08	99.73	20.52

OPERATING EXPENSES—ENTIRE LINE—CONTINUED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (Per Cent.)	RATIO TO TOTAL OPERATING EXPENSES. (Per Cent.)
II. MAINTENANCE OF EQUIPMENT—Continued:			
Brought forward,	7,818,196,08	99.73	20.52
Injuries to Persons,	9,889,21	.13	.03
Stationery and Printing,	678,199	.09	.02
Insurance,			
Other Expenses,	406,228	.05	.01
Total of Foregoing Accounts,	7,828,929,56	100.	20.58
Maintaining Joint Equipment at Terminals—Dr.,	17,111,12		
Equipment Borrowed—Dr.,			
Maintaining Joint Equipment at Terminals—Cr.,	10,351,33		
Equipment Loaned—Cr.,			
TOTAL—MAINTENANCE OF EQUIPMENT,	7,845,689,35		
III. TRAFFIC EXPENSES:			
Superintendence,	194,485,36	21.16	.51
Outside Agencies,	413,105,50	44.94	10.8
Advertising,	191,903,62	20.88	.50
Traffic Associations,	18,896,45	2.05	.05
Fast Freight Lines,			
Industrial and Immigration Bureaus,	17,364,82	1.89	.05
Stationery and Printing,	74,882,55	8.36	.20
Insurance,			
Other Expenses,	6,410,53	.72	.02
TOTAL—TRAFFIC EXPENSES,	919,100,03	100.	2.41
IV. TRANSPORTATION EXPENSES:			
Superintendence,	320,873,10	1.58	.84
Dispatching Trains,	508,418,89	2.51	1.33
Station Employees,	2,552,375,66	12.60	6.70
Weighing and Car-Service Associations,	47,992,96	.24	.13
Stockyards and Grain Elevators,			
Coal and Ore Docks,			
Station Supplies and Expenses,	154,099,99	.76	.40
Yardmasters and their Clerks,	193,062,96	.96	.51
Yard Conductors and Brakemen,	807,935,84	3.99	2.12
Yard Switch and Signal Tenders,	60,895,30	.30	.16
Yard Supplies and Expenses,	9,939,06	.05	.03
Yard Enginemen,	429,304,16	2.12	1.13
Enginehouse Expenses—Yard,	173,520,43	.86	.46
Fuel for Yard Locomotives,	729,847,69	3.60	1.92
Water for Yard Locomotives,	17,594,08	.09	.05
Lubricants for Yard Locomotives,	6,039,68	.03	.02
Other Supplies for Yard Locomotives,	8,912,77	.04	.02
Total of Last Fifteen Accounts,	4,023,118,07	20.73	10.82
Operating Joint Yards and Terminals—Dr.,	293,455,62		
Operating Joint Yards and Terminals—Cr.,	159,281,75		
Total Station and Yard Expenses,	4,157,291,94		
Motormen,			
Road Enginemen,	2,349,942,43	11.60	6.17
Enginehouse Expenses—Road,	657,491,24	3.24	1.73
Fuel for Road Locomotives,	3,749,974,60	18.47	10.15
Water for Road Locomotives,	329,791,06	1.11	.59
Lubricants for Road Locomotives,	63,173,82	.31	.17
Other Supplies for Road Locomotives,	54,218,37	.27	.14
Transportation Expenses carried forward,	9,120,891,52	45.00	23.95

All operating expenses in Minnesota to be charged on the basis of Train Milage.

OPERATING EXPENSES—ENTIRE LINE—CONCLUDED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (Per Cent.)	RATIO TO TOTAL OPERATING EXPENSES. (Per Cent.)
IV. TRANSPORTATION EXPENSES—Continued:			
Brought forward,	9120591.52	4300	2395
Operating Power Plants,			
Purchased Power,			
Road Trainmen,			
Train Supplies and Expenses,	2300223.74	1135	604
	602425.52	298	158
Interlockers, Block and Other Signals—Operation,	2434705	12	06
Crossing Flagmen and Gatemen,	5081672	25	13
Drawbridge Operation,	309320	15	08
Clearing Wrecks,	1079075	53	28
Telegraph and Telephone—Operation,	1272460	63	33
Operating Floating Equipment,	290754	14	08
Express Service,			
Stationery and Printing,	1040892	51	27
Insurance,			
Other Expenses,	391227	19	10
Loss and Damage—Freight,	8744176	431	230
Loss and Damage—Baggage,	258798	13	07
Damage to Property,	1003459	50	26
Damage to Stock on Right of Way,	1107506	55	29
Injuries to Persons,	5946716	293	156
Total of Last Twenty-six Accounts,	14243006274	7027	3738
Operating Joint Tracks—Dr.,	718696		
Operating Joint Tracks—Cr.,	10244584		
Total Movement Expenses,			
TOTAL—TRANSPORTATION EXPENSES,	2030562120		
V. GENERAL EXPENSES:			
Salaries and Expenses of General Officers,	1380174	1263	36
Salaries and Expenses of Clerks and Attendants,	4039331	3709	106
General Office Supplies and Expenses,	261692	240	07
Law Expenses,	1622431	1485	43
Insurance,			
Relief Department Expenses,	1858795	1702	49
Pensions,			
Stationery and Printing,			
Other Expenses,	509272	466	13
	1240458	1135	33
Total of Foregoing Accounts,	10924565	100	287
General Administration Joint Tracks, Yards, and Terminals—Dr.,	1047149		
General Administration Joint Tracks, Yards, and Terminals—Cr.,	481442		
TOTAL—GENERAL EXPENSES,	10244472		
RECAPITULATION OF EXPENSES:			
I. Maintenance of Way and Structures,	7847050 35		2064
II. Maintenance of Equipment,	7845689 35		2063
III. Traffic Expenses,	919199 03		242
IV. Transportation Expenses,	20305621 20		5341
V. General Expenses.	10244472		290
TOTAL OPERATING EXPENSES,	38020046 65		100
Ratio of Operating Expenses to Operating Revenues, 55.54 per cent.*			
	Railway Company's Apportionment	From Mileage Basis of Entire Line	
OPERATING EXPENSES—STATE OF MINNESOTA			
I. Maintenance of Way and Structures,	1400678 35	1490547 21	
II. Maintenance of Equipment,	1562543 68	1490285 69	
III. Traffic Expenses,	178219	170160 86	
IV. Transportation Expenses,	3957629 80	3857052 74	
V. General Expenses,	211216 02	201409 87	
TOTAL OPERATING EXPENSES,	7310282 04	7219899 87	
Ratio of Operating Expenses to Operating Revenues, _____ per cent.*	5346	5281	

*Two (2) decimal figures required.

SUMMARY OF REVENUES AND EXPENSES OF OUTSIDE OPERATIONS AND OTHER PROPERTIES.

A. OUTSIDE OPERATIONS.

DESIGNATION.	REVENUES.	EXPENSES.	NET REVENUE OR DEFICIT.
1. Boat Lines,			
2. Ferry Lines,			
3. Harbor Terminal Transfers,			
4. Electric Railways,			
5. Express Lines,			
6. Cab and Omnibus Service,			
7. Sleeping-Car Service,	60700988	27550380	33150608
8. Parlor and Chair Car Service,	17898208	11636751	6261457
9. Dining and Special Car Service,	5677923	6005736	3278130
10. Electric Light and Power Plants,			
11. Gas-Producing Plants,			
12. Canals,			
13. Grain Elevators,			
14. Stock Yards,			
15. Commercial Telegraph and Telephone Lines,			
16. Hotels and Restaurants,	3599859	2919836	680023
17. Amusement Parks and Resorts,			
18. Coal Storage Plants,			
19. Cold-Storage Plants,			
20. Commercial Ice-Supply Plants,			
21. Public Toll-Bridge Service,			
Miscellaneous:			
TOTAL,	171377294	128441336	42935958

JOINT TRACKS:	Duluth and Superior	Wis.Central Ry	$ 4 249.98
	"	Dul S Shore & Atl Ry	7 814.25
	St Paul – Minneapolis	Chgo Great Western Ry	42 186.14
	"	Mpls & St Louis RR	42 901.15
	"	Mpls St P & S Ste M Ry	26 721.20
	"	Wis Cent (StP&SCF)	14 143.56
	Dugdale & Red Lake Falls	Great Northern Ry	2 798.42
	Fargo and Casselton	"	3 011.48
	Brainerd & Little Falls	Minn.& Internatl Ry	973.40
	Huntly and Billings	Chgo Burl & Quincy RR	15 280.56
	Lowell and Snohomish	Puget Sd & Int Ry & P Co	4 400.00
	Junction and Everett	Great Northern Ry	3 360.62
	Seattle and Tacoma	"	40 725.80
	Gobel and Portland	Astoria & Col Riv RR	67 417.59
	Silverbow & Meaderville	Oregon Short Line	18 813.61
JOINT YARDS & TERMLS:	Superior	Chgo Mil & St Paul Ry	741.29
	Stillwater	"	480.00
	Shoskin, Wash.	"	100.00
	Superior	Chgo St P M & O Ry	745.56
	St Paul and Duluth	"	1 584.61
	Superior	Great Northern Ry	18 003.60
	Duluth,Carlton,Cloquet	"	2 493.81
	Helena, Butte, Mont	"	2 675.71
	Spokane,Tacoma,Seattle,Everett	"	4 423.13
	Superior	Lake Supr T & Transf Ry	920.47
	Minneapolis	Chgo Great Western Ry	1 964.04
	Duluth	Dul Mis & Nor Ry	5 176.00
	"	Dul S Shore & Atl Ry	2 340.11
	"	Dul & Iron Range RR	2 950.29
	Brainerd	Minn & Internatl Ry	960.00
	St Paul	Mpls & St Louis R R	11 495.12
	St Paul & Minneapolis	M St P & S Ste M Ry	36 976.79
	Billings & Huntley	Chgo Burl & Quincy RR	1 408.50
	Lewiston	Ore Wash & Idaho Ry	14 096.20
	Spokane,Pasco, Vancouver	Spokane Port & S Ry	1 242.25
	Dayton, Wash	Oregon RR & Nav Co	78.00
	Portland, Ore.	Ast. & Col.River RR	3 239.09
	Nehalem, Wash	Gobel,N & Pacific Ry	2.00
	Seattle	Seattle Pass.Station	7 474.33
	St Louis Bridge (Duluth & Superior)	Chgo St P M & O Ry	18 605.02
	" "	Great Northern Ry	39 098.51
	T O T A L		$474 072.17

RENTS RECEIVABLE.

1. FROM LEASE OF ROAD.

[For companies making operating reports.]

PROPERTY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
The Manitoba Ry Northern Pacific Ry	In Manitoba Gwert to Anaconda, Mont	Provincial Government Butte Anaconda & Pacific Ry Co		2100000 199966
TOTAL,				2299966

2. FROM JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
JOINT TRACKS:	See p. 68			
JOINT YARDS AND TERMINALS:	See p. 68			
TOTAL,				4740717

RENTS RECEIVABLE—CONTINUED.

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
TOTAL,				

MISCELLANEOUS INCOME.

SOURCE OF INCOME.	GROSS INCOME.	EXPENSES.	NET MISCELLANEOUS INCOME.
Rental of Docks Buildings & other property	230 50572	92 34941	138 15631
Taxes collected from Lessees of property	57 55996		57 55996
Rent of Track Material			11 2066
Hbs Con Comp proportion from operation of Stock Yards			3 37026
Receipts from Operating Dept. Lands sold			52097
Miscellaneous			182600
TOTAL,			212 54416

RENTS PAYABLE.

1. FOR LEASE OF ROAD.

NAME OF LESSOR.	LOCATION OF PROPERTY.	GUARANTEED INTEREST ON BONDS.	GUARANTEED DIVIDENDS ON STOCK.	CASH.	TOTAL.
Washington Central Ry Co		74120 00			74120 00
Oregon Short Line R.R. Co				51331 86	51331 86
TOTAL,		74120 00		51331 86	125451 86

2. FOR JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
JOINT TRACKS:	St. Paul to Minneapolis	Great Northern Ry Co		42219 19
	Northtown Jct. to St Cloud Minn	"		19587 07
	Minneapolis	Minnpls. & St Louis R.R. Co		8679 97
	Helena to Boomerang Mont.	Great Northern Ry		2670 52
Joint Yards & Terminals				
	Ashland Wis.	Wisconsin Central Ry Co		225 87
	" "	Chi. & Northwestern Ry Co		50 04
	Superior "	Duluth Superior Term & Trans Ry Co		6265 89
JOINT YARDS AND TERMINALS:	Duluth & Superior "	Chi. St Paul. Minnpls & O. Ry Co		226 99
	Minnesota Transfer Minn	Minnesota Transfer Ry Co		9251 46
	Scandon & Minneapolis "	Great Northern Ry Co		445 08
	Gaviary Wash St. Paul Minn	Chi. Burlington & Quincy R.R. Co		1068 28 5297 77
	St Anthony's Park "	Chi. Great Western Ry Co		475 70
	St Paul "	St Paul Union Depot Co		9649 92
	Duluth "	Duluth Union Depot & Trans Co		1126 95
	Seattle Wash	Oregon & Wash. Ry Co		120 00
TOTAL,	Wallula "	Ore & Puget Sound Ry Co		40 00
		Oregon R.R. & Nav Co		106 00
	Portland	Nor. Pac. Terminal Co		9297 95
			Total	210469 65

RENTS PAYABLE—CONTINUED.

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
Harbor Area & sundry lands	Various points	Various		121483
TOTAL,				

OTHER DEDUCTIONS FROM INCOME.

NATURE OF DEDUCTION.	ITEM.	TOTAL.	REMARKS.
TOTAL,			

SEPARATELY OPERATED PROPERTIES.

[For comparison with preceding operating reports.]

NAME OF PROPERTY.	LOCATION OF PROPERTY.	PROFIT.	LOSS.
NET TOTAL,			

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	ASSETS.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	338867868584	Cost of Road—Page 35,		349188814467	10320945883	
	39641597889	Cost of Equipment—Page 37,		41602239114	1960341225	
	2718849 5	General Expenditures—37,		28177211	988913	
	52359390 94	Stocks Owned—Pages 49, 51, and 57,		56812620 48	4460958 54	
	12057236777	Funded Debt Owned—Pages 53, 55, and 57,		30161649 05	1810241088	
		Other Permanent Investments,				
		Lands Owned,				
	2365196 96	Land Dept. Cement Assets		2535231 13	170034 17	
	732344970 6	Cash and Current Assets—Page 29,		842921161	11694714 55	
		OTHER ASSETS:				
		Equipment Trusts,				
	61133885 17	Materials and Supplies—Page 29,		6166559 92	5329774 75	
		Sinking, Insurance, and Other				
	50000000 00	Funds—Page 59,		51392785 35	13927835	
		Sundries,				
	3045306	Material & Supplies Cancd		3045306		
	9840553 6	Cash in hands of Trustee of Mortgage		19287425 0	9446871 14	
		Securities in hands of Trustee of Sinking				
	13528473 3	Fund, Div. Poly as collateral		12882412 3		645606 08
		Securities in hands of Trustee of N.Y.				
	109114309 76	C.N. Joint bonds as collateral		109114809 76	500 00	
		Profit and Loss—Page 43,				
	5942709692	GRAND TOTAL,		6380485556 5	437775864 51	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	LIABILITIES.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	155000000 00	Capital Stock—Page 21,		248000000 00	30118164 03	
	62881835 97	Subscriptions to Nat Capital Stock				
	190239739 32	Funded Debt—Page 27,		191437500 00	1197760 68	
	22322743 77	Current Liabilities—Page 29,		27180652 55	4857908 78	
	536786 66	Accrued Interest on Funded Debt not yet payable,		505616 66		31170 00
	107613000 00	N.R.E.N. Joint Bonds		107613500 00	500 00	
	65498 87	Liquidation Account				65498 87
	5000000 00	Insurance Fund Account		5139278 35	139278 35	
	50611364 53	Profit and Loss—Page 43,		58172008 07	7560643 54	
	594270969 12	GRAND TOTAL,		638048555 63	43777586 51	

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES.					
		DOLLARS.			CTS.	MILLS.	
PASSENGER TRAFFIC:							
1. Number of Passengers Carried Earning Revenue,	8404712						
2. Number of Passengers Carried One Mile,	70743946 5						
3. Number of Passengers Carried One Mile per Mile of Road,	13.53320						
4. Average Distance Carried,* miles,	9.31						
5. Total Passenger Revenue—Page 45,		1733	060	806			
6. Average Amount Received from each Passenger,†				2	06	2	01
7. Average Receipts per Passenger per Mile,†				0	22	2	58
8. Total Passenger Service Train Revenue—Page 45,		2011	100	818			
9. Passenger Service Train Revenue per Mile of Road,*			354	611			
10. Passenger Service Train Revenue per Train-Mile,†				1	93	1	46
FREIGHT TRAFFIC:							
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	16800504						
12. Number of Tons Carried One Mile,	5240492660						
13. Number of Tons Carried One Mile per Mile of Road,	927565						
14. Average Distance Haul of One Ton,* miles,	311.12						
15. Total Freight Revenue—Page 45,		4707	330	513			
16. Average Amount Received for each Ton of Freight,†				2	80	1	90
17. Average Receipts per Ton per Mile,†				0	08	8	95
18. Freight Revenue per Mile of Road,*			8300	28			
19. Freight Revenue per Train-Mile,†				3	85	8	90
TOTAL TRAFFIC:							
20. Operating Revenues—Page 45,		6846	074	721			
21. Operating Revenues per Mile of Road,*			1207	146			
22. Operating Revenues per Train-Mile,†				3	15	2	96
23. Operating Expenses—Page 65 (or 65A),		3802	004	065			
24. Operating Expenses per Mile of Road,*			670	394			
25. Operating Expenses per Train-Mile,†				1	75	1	01
26. Net Operating Revenue (or Deficit)—Page 39,		3044	070	256			
27. Net Operating Revenue (or Deficit) per Mile of Road,*			536	752			
28. Average Number of Passengers per Car-Mile,	19						
29. Average Number of Passengers per Train-Mile,	74						
30. Average Number of Passenger Cars per Train-Mile,*	4.16						
31. Average Number of Tons of Freight per Loaded Car-Mile,*	18.20						
32. Average Number of Tons of Freight per Train-Mile,*	434.59						
33. Average Number of Freight Cars per Train-Mile,*	31.12						
34. Average Number of Loaded Cars per Train-Mile,*	23.88						
35. Average Number of Empty Cars per Train-Mile,*	6.31						
36. Average Mileage Operated During Year,	567.29						

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE—CONTINUED.

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	13295150	
38. Passenger Locomotive-Miles	10116447	
39. Mixed Locomotive-Miles,	742276	
40. Special Locomotive-Miles,	37218	
41. Switching Locomotive-Miles,	4624873	
42. TOTAL IN REVENUE SERVICE,		28815964
43. Nonrevenue Service Locomotive-Miles,		2818648
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles		
44. Loaded,	289036756	
45. Empty,	76398547	
46. Caboose,	11223216	
47. TOTAL,		376658519
Passenger Car-Miles		
48. Passenger,	23795373	
49. Sleeping, Parlor, and Observation,	16921063	
50. Other Passenger-Train Cars,	22790987	
51. TOTAL,		63507423
Special Car-Miles—		
52. Freight—loaded,	262512	
53. Freight—empty,	189	
54. Caboose,	5902	
55. Passenger,	43771	
56. Sleeping, Parlor, and Observation,	99884	
57. Other Passenger-Train Cars,	71394	
58. TOTAL,		477952
59. TOTAL IN REVENUE SERVICE,		440648894
60. Nonrevenue Service Car-Miles		8878068
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	11370280	
62. Passenger Train-Miles,	9571432	
63. Mixed Train-Miles,	734263	
64. Special Train-Miles,	37218	
65. TOTAL REVENUE TRAIN MILEAGE,		21713193
66. Nonrevenue Service Train-Miles,		2428041

TRAFFIC AND MILEAGE STATISTICS—STATE OF .....

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES.		
		DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of Passengers Carried Earning Revenue,	2323225			
2. Number of Passengers Carried One Mile,	153080713			
3. Number of Passengers Carried One Mile per Mile of Road,	155265			
4. Average Distance Carried,* miles,	6589			
5. Total Passenger Revenue—Page 45,		2937809	04	
6. Average Amount Received from each Passenger,†			1264	54
7. Average Receipts per Passenger per Mile,†			01	919
8. Total Passenger Service Train Revenue—Page 45,		3496701	55	
9. Passenger Service Train Revenue per Mile of Road,*		3546	60	
10. Passenger Service Train Revenue per Train-Mile,†			1	66203
FREIGHT TRAFFIC:				
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	6617304			
12. Number of Tons Carried One Mile,	1121821283			
13. Number of Tons Carried One Mile per Mile of Road,	113783			
14. Average Distance Haul of One Ton,* miles,	16953			
15. Total Freight Revenue—Page 45,		9761844	00	
16. Average Amount Received for each Ton of Freight,†			1475	20
17. Average Receipts per Ton per Mile,†			00	870
18. Freight Revenue per Mile of Road,*		9901	15	
19. Freight Revenue per Train-Mile,†			4609	177
TOTAL TRAFFIC:				
20. Operating Revenues—Page 45,		13674241	08	
21. Operating Revenues per Mile of Road,*		13869	38	
22. Operating Revenues per Train-Mile,†			331	537
23. Operating Expenses—Page 65 (or 65A),		7310282	04	
24. Operating Expenses per Mile of Road,*		7414	61	
25. Operating Expenses per Train-Mile,†			177	240
26. Net Operating Revenue (or Deficit)—Page 39,		6363959	04	
27. Net Operating Revenue (or Deficit) per Mile of Road,*		6454	77	
28. Average Number of Passengers per Car-Mile,	19			
29. Average Number of Passengers per Train-Mile,	72			
30. Average Number of Passenger Cars per Train-Mile,*	568			
31. Average Number of Tons of Freight per Loaded Car-Mile,*	1901			
32. Average Number of Tons of Freight per Train-Mile,*	52883			
33. Average Number of Freight Cars per Train-Mile,*	3687			
34. Average Number of Loaded Cars per Train-Mile,*	2782			
35. Average Number of Empty Cars per Train-Mile,*	811			
36. Average Mileage Operated During Year,*	98593			

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—STATE OF .....—CONTINUED.

CLASSIFICATION	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	2177316	
38. Passenger Locomotive-Miles	2042712	
39. Mixed Locomotive-Miles,	133430	
40. Special Locomotive-Miles,	6239	
41. Switching Locomotive-Miles,	1513475	
42. TOTAL IN REVENUE SERVICE,		5873672
43. Nonrevenue Service Locomotive-Miles,		479542
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	59025320	
45. Empty,	17202000	
46. Caboose,	1993559	
47. TOTAL,		78220879
Passenger Car-Miles—		
48. Passenger,	5198943	
49. Sleeping, Parlor, and Observation,	2825356	
50. Other Passenger-Train Cars,	1074612	
51. TOTAL,		12098911
Special Car-Miles—		
52. Freight—loaded,	63172	
53. Freight—empty,		
54. Caboose,	1749	
55. Passenger,	9493	
56. Sleeping, Parlor, and Observation,	4224	
57. Other Passenger-Train Cars,	7811	
58. TOTAL,		86449
59. TOTAL IN REVENUE SERVICE,		90406214
60. Nonrevenue Service Car-Miles,		1291858
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	1988764	
62. Passenger Train-Miles,	1996937	
63. Mixed Train-Miles,	132562	
64. Special Train-Miles,	6239	
65. TOTAL REVENUE TRAIN MILEAGE,		4124502
66. Nonrevenue Service Train-Miles,		464777

[Page 100 follows.]

FREIGHT TRAFFIC MOVEMENT—STATE OF MINNESOTA

[COMPANY'S MATERIAL EXCLUDED.]

COMMODITY.		FREIGHT ORIGINATING ON THIS ROAD. Whole Tons.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS. Whole Tons.	TOTAL FREIGHT TONNAGE. Whole Tons.	Per Cent.
Products of Agriculture.	Grain,	1175634	359710	1535344	23·20
	Flour,	121384	3508	124892	1·89
	Other Mill Products,	78387	6152	84539	1·28
	Hay,	47541	4454	51995	0·79
	Tobacco,	-	343	343	-
	Cotton,	-	3687	3687	0·06
	Fruit and Vegetables,	74634	38814	113448	1·71
	Other Products of Agriculture,	32273	10556	42829	0·65
	TOTAL,	1529813	427264	1957077	29·58
Products of Animals.	Live Stock,	89464	2835	92299	1·39
	Dressed Meats,	9472	7995	17467	0·26
	Other Packing-House Products,	2330	3523	5853	0·09
	Poultry, Game, and Fish,	21434	983	22417	0·34
	Wool,	9483	649	10132	0·15
	Hides and Leather,	5194	574	5768	0·09
	Other Products of Animals,	5513	2253	7766	0·12
	TOTAL,	142890	18812	161702	2·44
Products of Mines.	Anthracite Coal,	340631	10061	350692	5·30
	Bituminous Coal,	832520	7374	839894	12·69
	Coke,	42952	2329	45281	0·68
	Ores,	55633	28653	84286	1·27
	Stone, Sand, and other like articles,	195297	19565	214862	3·25
	Other Products of Mines,	46841	138	47979	0·73
	TOTAL,	1513874	69120	1582994	23·92
Products of Forests.	Lumber,	902016	107627	1010243	15·27
	Other Products of Forests,	304119	60387	464506	7·02
	TOTAL,	1206735	268014	1474749	22·29
Manufactures.	Petroleum and other Oils,	15445	21985	37430	0·56
	Sugar,	9270	6954	16224	0·24
	Naval Stores,	-	90	90	-
	Iron, Pig and Bloom,	14810	4319	19129	0·29
	Iron and Steel Rails,	22496	20052	42548	0·64
	Other Castings and Machinery,	39748	47937	87685	1·33
	Bar and Sheet Metal,	42796	39381	82177	1·24
	Cement, Brick, and Lime,	109047	66818	175865	2·66
	Agricultural Implements,	9837	16775	26612	0·40
	Wagons, Carriages, Tools, etc.,	-	10728	10728	0·16
	Wines, Liquors, and Beers,	28021	26123	54144	0·82
	Household Goods and Furniture,	4754	17057	21811	0·33
	Other Manufactures,	102488	157546	260034	3·93
	TOTAL,	398712	435771	834483	12·60
Merchandise,		333891	89401	423292	6·40
Miscellaneous: Other commodities not mentioned above,		126675	56332	183007	2·77
	TOTAL TONNAGE—STATE,	5252590	1364714	6617304	100 -
	TOTAL TONNAGE—ENTIRE LINE,	13719648	3080856	16800504	-

MILEAGE—ENTIRE LINE.

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE OWNED. MAIN LINE.	LINE OWNED. BRANCHES AND SPURS.	LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.
Miles of single track,	280411	302693		19464		6174	608742	6165	1301	601267
Miles of second track,	36976	153		6334		1506	44969	11743		43463
Miles of third track,	2037						2037			2037
Miles of fourth track,										
Miles of yard track and sidings,	143716	34733		4064		11274	193777	13571	9653	172850
TOTAL MILEAGE OPERATED (ALL TRACKS).	463140	337579		29852		18954	849525	31479	10954	819617

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OR TERRITORY.	LINE OWNED. MAIN LINE.	LINE OWNED. BRANCHES AND SPURS.	LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.
Wisconsin	8797	5662				60	14519	44	09	14450
Minnesota	57311	45962				1439	104712	774	760	102518
North Dakota	37754	80610				59	118423		532	117832
Montana	94214	44802		6397		3785	149198	2169		145413
Idaho	8334	25976				29	34339	3178		34310
Washington	69872	94818		13067		168	177925			177757
Oregon	4129	4863				634	9626			8992
TOTAL MILEAGE OPERATED (SINGLE TRACK).	280411	302693		19464		6174	608742	6165	1301	601267

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OR TERRITORY.	LINE OWNED. MAIN LINE.	LINE OWNED. BRANCHES AND SPURS.		TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS. IRON.	RAILS. STEEL.	REMARKS.
Wisconsin	8797	5662		14459	44	09	14450	
Minnesota	57311	45962		103273	774	760	102518	
North Dakota	37754	80610		118364		532	117832	
Montana	94214	46211	X	140425	2169		140425	
Idaho	8334	25976		34310	3178		34310	
Washington	69872	96631	O	166503			166503	
Oregon	4129	4863		8992			8992	
Manitoba		35558		35558			35558	
TOTAL MILEAGE OWNED (SINGLE TRACK).	280411	341473		621884	6165	1301	620583	

X Decrease in 09 mileage operated

O " 1913 " "

MILEAGE—STATE OF MINNESOTA

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	573.11	459.62				14.39	1047.12	7.74	7.60	1025.13
Miles of second track,	139.47			61.65		11.62	212.74	7.87		201.12
Miles of third track,	20.37						20.37			20.37
Miles of fourth track,										
Miles of yard track and sidings,	409.93	70.43		8.83		82.96	572.15	26.73	42.54	446.66
TOTAL MILEAGE OPERATED (All Tracks).	1142.88	530.05		70.48		108.97	1852.38	42.34	50.14	1693.27

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	573.11	459.62				14.39	1047.12	7.74	7.60	1025.13
TOTAL MILEAGE OPERATED (Single Track).										

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	573.11	459.62		1032.73	7.74	7.60	1025.13	
TOTAL MILEAGE OWNED (Single Track).								

TAXES AND ASSESSMENTS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Wisconsin	252830			5398476 1		767739		3296569
Minnesota						3883665		5786806
North Dakota	3239624					619467		3246591
Montana	4245478			90000		290633		4253519
Idaho	80661		20000			16782		822143
Washington	9442292				12200	1265218		10709053
Oregon	236193		20000			95487		2477422
Balance offices in other States (see p. 120)	18188							18188
TOTAL.	18217335		50000	54074761	12200	18472971		25478367

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
TOTAL.								

United States of America.

Circuit Court of the United States, District of Minnesota. Third Division.

I, Louise B.Trott, Clerk of said Circuit Court, do hereby certify and return to the Honorable, The Supreme Court of the United States, that the foregoing, containing 4258 pages of testimony,numbered consecutively from 1 to 4258 inclusive and one volume of Complainants Exhibits containing 287 pages and one Volume of Defendants Exhibits containing 377 pages, is a true and complete transcript of the printed testimony and complainants and defendants exhibits and abridged reports to the State of Minnesota for the years 1907, 1908 and 1909,and of the whole thereof, as appears from the original records and files of said Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Saint Paul, in the District of Minnesota, this 10th day of May A.D.1911.

Louise B Trott

Clerk.